

**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
**OFFICE OF CONSERVATION AND COASTAL LANDS**  
Honolulu, Hawaii

REF:OCCL:DH

ENF: MA-08-30

May 23, 2008

**Board of Land and  
Natural Resources  
State of Hawaii  
Honolulu, Hawaii**

**REGARDING:** Enforcement File No. MA-08-30  
Regarding Unauthorized Seawall Improvements Located Makai of  
Shoreline in the Vicinity of Subject Parcel (2) 4-4-001:042

**BY:** Hale Kai AOA Condominiums, 3695 Lower Honoapiilani Road,  
Lahaina, Island of Maui - Owner of Subject Parcel (2) 4-4-001:042

**AREA OF USE:** Approximately 60 Linear Feet

**AREA OF PARCEL:** 46,328 Square Feet

**LOCATION:** Lahaina District, Island of Maui

**SUBZONE:** Resource

**DESCRIPTION OF AREA:**

The subject property TMK: (2) 4-4-001:042 is located adjacent to the shores of Honokowai Beach Park, Lahaina, Island of Maui, and located in the State Land Use (SLU) Urban District. Although the condominium development is mainly within the Urban District; areas makai of the shoreline are in the SLU Conservation District. A white sandy beach defines the subject area. According to the Atlas of Natural Hazards in the Hawaiian Coastal Zone, the subject area is in a moderate to high Overall Hazard Assessment area. Access to the subject parcel is from Lower Honoapiilani Road in Lahaina (Exhibits 1, 2, 3 & 4).

**ALLEGED UNAUTHORIZED LAND USES:**

In October 2007, the Department of Land and Natural Resources' (DLNR), Office of Conservation and Coastal Lands (OCCL) received a complaint regarding the alleged, unauthorized construction and improvement to a seawall, and construction of a filter fabric trench located in the shoreline area of parcel TMK: (2) 4-4-001:042.

On October 17, 2007, the DLNR Maui District Land Office (MDLO) conducted a site inspection of the area in the vicinity of Subject Parcel (2) 4-4-001:042 (**Exhibit 5**).

On November 30, 2007, the OCCL sent a letter to the Hale Kai AOA regarding the unauthorized improvements to the seawall and asked they respond (**Exhibit 6**).

On December 12, 2007, the OCCL received a letter from Nai'a Properties, Inc. regarding the alleged, unauthorized work that occurred (**Exhibit 7**). In that letter, a representative of Hale Kai AOA explained that the work did not affect the shoreline.

On March 6, 2008, OCCL staff met with the complainant and current Hale Kai condominium owner, Don Newton, who gave: 1) photographs; 2) 1993 Maui County Planning Department Special Management Area exemption and shoreline setback letter, 3) Sea Engineering Report "Coastal Engineering Investigation at Hale Kai Condominium" dated April 4, 2007; 4) Hale Kai Association of Apartment Owners Board of Director's Meeting Minutes dated June 17, 2004, June 15, 2007 and November 12, 2007; 5) Nai'a Properties Property Inspection Report 9/6/2007; and 6) July 10, 2007 meeting minutes and seawall bid. The photos show the following (**Exhibit 8**):

- 1970-1984 aerial seawall to left of picture and rocks dumped in front of wall –naupaka in foreground next to pool area;
- 4/28/1998 – 4/29/1998 - dig trench makai of wall – naupaka being removed;
- 5/4/98 - 5/7/98 - bulldozer dumps rocks makai of wall;
- 7/4/04 – rocks cemented in front of seawall;
- 7/26/04 – 7/11/06 construction on seawall to raise it from height above cemented rocks;
- 8/4/07 – trenching activities and placement of filter fabric behind the wall to left;
- 8/8/07 – 8/11/07 - additional construction on seawall to raise height, installation of drain pipes;
- 9/10/07 – 11/8/07 – additional construction on seawall to add stones on top of seawall;
- 11/15/07 – photos show water splashing over side of seawall; and
- 3/6/08 – current photos.

#### **REFERRAL OF ALLEGED VIOLATIONS TO THE LAND BOARD RATHER THAN THE HEARING OFFICER/ADMINISTRATIVE PENALTY SYSTEM (HOAPS):**

This alleged violation has been referred to the BLNR rather than HOAPS because of the seriousness of the violation<sup>1</sup>. Due to the nature of the case, staff determined that the violation must be referred to the BLNR as a Level I violation.

#### **RESOLUTION OF UNAUTHORIZED LAND USES:**

The DLNR and Board of Land and Natural Resources (BLNR) have jurisdiction over land lying

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<sup>1</sup> HOAPS distinguishes between Level I and Level II violations, the former being the more serious category which is referred to the Board, and the latter, minor violations, referred to HOAPS.

makai of the shoreline as evidenced by the upper reaches of the wash of the waves other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limits of debris left by the wash of the waves, pursuant to Section 205A-1, Hawaii Revised Statutes (HRS), DEFINITIONS.

As evidenced by the wave run up in **Exhibit 8**, Staff believes that OCCL has sufficient cause to bring this matter to the BLNR since it is evident that some of the improvements that were constructed in the shoreline area are located within the Conservation District pursuant to the Hawaii Administrative Rules (HAR), Section 15-15-20 Standards for determining "C" Conservation District boundaries:

"It shall include lands having an elevation below the shoreline as stated by Section 205A-1, HRS, marine waters, fishponds, and tidepools of the State, and accreted portions of lands pursuant to Section 501-33, HRS, unless otherwise designated on the district maps. All offshore and outlying islands of the State are classified conservation unless otherwise designated on the land use district maps."

## **CONSERVATION DISTRICT**

Chapter 13-5, HAR and Chapter 183C, HRS, regulate land uses in the Conservation District by identifying a list of uses that may be allowed by Conservation District Use Permit. The chapters also provide for penalties, collection of administrative costs, costs associated with land and/or habitat restoration, and damages to state land for uses that are not allowed or for which no permit has been obtained. Chapter 13-5, HAR defines "land use" in part as: the placement or erection of any solid material on land or the grading, removing or dredging of any material or natural resource on land.

### ***Hawaii Coastal Erosion Management Plan***

In 1999, the BLNR adopted the Hawaii Coastal Erosion Management Plan (COEMAP) and approved specific criteria to guide Staff to resolved cases involving unauthorized shoreline structures.

In assessing cases involving unauthorized shoreline structures, specific criteria are as follows:

1. Protect/preserve/enhance public shoreline access;
2. Protect/preserve/enhance public beach areas;
3. Protect adjacent properties;
4. Protect property and important facilities/structures from erosion damages; and
5. Implement a "no tolerance" policy for recent or new unauthorized shoreline structures.

The DLNR considers each case based on the specific circumstances/history. For instance, the age of the structure, the quality of the surrounding beach resources, the nature of the surrounding development, and the risk to life and limb are all evaluated to help formulate a position with respect to the disposition of the matter. For structures built after the 1999 "no tolerance" policy for

unauthorized shoreline structures, the customary policy is to seek the removal of the structure.

Staff notes that the landowner made improvements to the seawall (trenching, and placement of rocks on the seaward side of the structure, cementing of rocks, trenching and backfilling landward of the main structure, and raising of the seawall elevation). Some of this work occurred prior to the no tolerance policy, and some of the work occurred after the adoption of the no tolerance policy. In addition, it appears that some of the work occurred partially within the jurisdiction of the Maui County.

This report seeks conditions to resolve the one Conservation District violation. Pursuant to Chapter 183C, HRS, the maximum fine for a Conservation District violation is \$2,000 in addition to administrative costs, costs associated with the land and/or habitat restoration, if required, and damages to state land. After written or verbal notification from the Department, willful violation of this section may incur an additional fine of up to \$2,000 per day per violation for each day the violation persists

## DISCUSSION

Staff has reviewed the photograph and records that have been collected in this case. While it is clear that waves have been washing beyond the structure (that is why Hale Kai AOA keeps increasing the elevation), the DLNR would like to focus its attention on the major actions, which clearly took place seaward of the shoreline. This would be the unauthorized placement of boulders in the makai area, in May 1998, and the placement of cement on some of the rocks in July 2004. Although there are a number of other serious actions that took place on this structure for which no government agency granted approved, and which are articulated in a chronology on page two (2) of this report, staff feels that some of these matters should be addressed by the Maui County Planning Department since these actions appear to have taken place on the landward portions of the structure<sup>2</sup>.

The County of Maui Planning Department did authorize some improvements in 1993 to repair the seawall at Hale Kai Condominiums (refer to **Exhibit 8**). Staff notes the county authorization provided for repair of an existing structure, which they determined, was exempt from SMA rules and Regulations, Section 2-5.5(b)(6). The 1993 county approval appears to be solely related to the placement of filter material and gravel on the landward portion of the seawall. However, the improvements highlighted in this report appear to be beyond the scope of, or are in addition to the improvements contemplated in the 1993 County of Maui authorization. Staff notes a check was made to see whether any DLNR approvals and/or any past Certified Shorelines were submitted and approved from the DLNR Land Division and Department of Accounting and General Services (DAGS), State Survey Division. No other authorization(s) has been granted subsequent to the 1993 county authorization for seawall repairs

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<sup>2</sup> Staff will make sure the Maui County Planning Department receives a copy of this report.

### Boulders

Because the boulders were placed prior to the Board's no tolerance policy the Board may either require the Hale Kai AOA to remove the boulders or fine them and require Hale Kai AOA to file an after-the-fact-Conservation District Use Application for the boulders.

### Cement

The cement was poured after the adoption of the Board's no tolerance policy. Therefore, staff must recommend that the cement be removed.

It is clear to OCCL staff that the Hale Koa AOA Condominium will need to address possible and future erosion issues, and will need to consult with the OCCL staff for any proposed remediation improvements.

This submittal and notice of the Board's meeting will be sent to the landowner and counsel by certified mail to the address of record in Hawaii.

### **FINDINGS**

1. That Hale Kai AOA did in fact, authorize, cause or allow the unauthorized seawall improvements located makai of shoreline in the vicinity of Subject Parcel (2) 4-4-001:042 is considered one separate land use;
2. That the unauthorized improvements are within the State Land Use Conservation District, Resource subzone;

### **AS SUCH, STAFF RECOMMENDS AS FOLLOWS:**

That, pursuant to Chapter 183C, Hawaii Revised Statutes (HRS), the Board finds Hale Kai AOA Condominiums in violation of Chapter 183C and Chapter 13-5, Hawaii Administrative Rules (HAR), and is subject to the following:

1. The Hale Kai AOA violated the provisions of Chapter 183C, Hawaii Revised Statutes (HRS), and Chapter 13-5, Hawaii Administrative Rules (HAR), two instances by placing boulders and cement material makai of shoreline in the vicinity of Subject Parcel (2) 4-4-001:042 in the Conservation District to occur. The landowner is fined a total of \$4,000.00 for two Conservation District violations;
2. That Hale Kai AOA will remove the subject boulders and cement and restore the area back to its original condition as it existed prior to the construction of these improvements, within 180 days from the date of the Board of Land and Natural Resource's action.

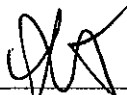
3. That Hale Kai AOA will stake the metes and bounds of their subject parcel as not to infringe upon state-owned beach lands after the removal of the boulders and cement;
4. That Hale Kai AOA is fined an additional **\$1,000.00** for administrative costs associated with the subject violations (\$500.00 OCCL staff/\$250.00 MDLO staff/\$250 DOCARE staff);
5. That Hale Kai AOA shall pay all fines (**total \$5,000.00**) within thirty (30) days of the date of the Board of Land and Natural Resources' action;
6. That OCCL will transmit a copy of this report to the County of Maui to enable Maui County to investigate all other unauthorized improvements made on the seawall structure;
7. That either the OCCL and/or the MDLO staff will conduct a site visit of the area within 180 days from the date of the removal of the boulders and cement;
8. That no further work shall occur in the area within the Conservation District, without the Board of Land and Natural Resources' approval; Chairman's approval and/or OCCL approval. If further work occurs in the Conservation District without approval; the alleged will be fined an additional \$2,000 a day;
9. That in the event of failure of Hale Kai AOA to comply with any order herein, they shall be fined an additional \$2,000 per day until the order is complied with; and
10. That in the event of failure of Hale Kai to comply with any order herein, the matter shall be turned over to the Attorney General for disposition, including all administrative costs.

Respectfully submitted,

*Dawn P. Hegger*

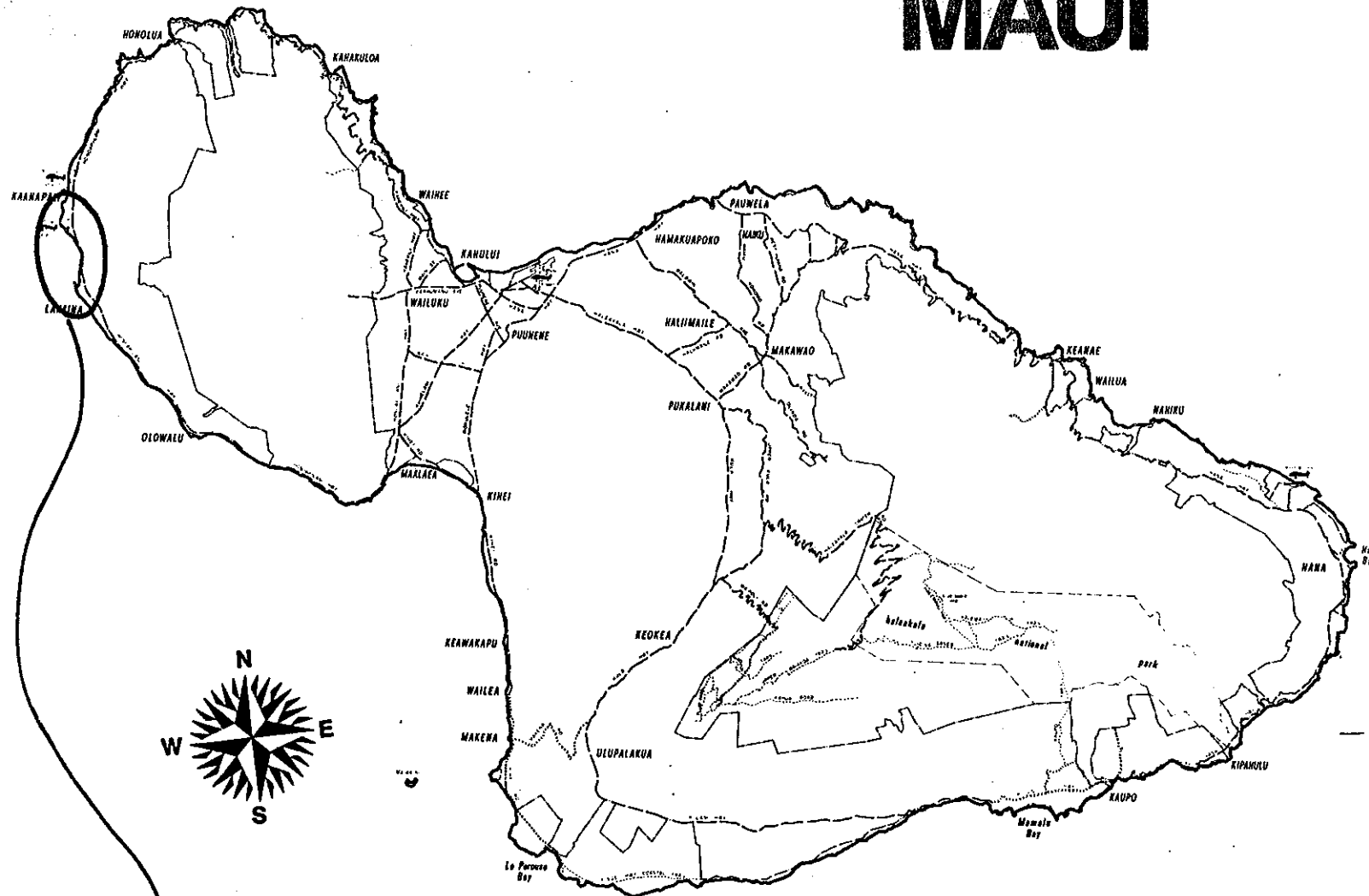
Dawn T. Hegger,  
Senior Staff Planner

Approved for submittal:



**LAURA H. THIELEN**, Chairperson  
Board of Land and Natural Resources

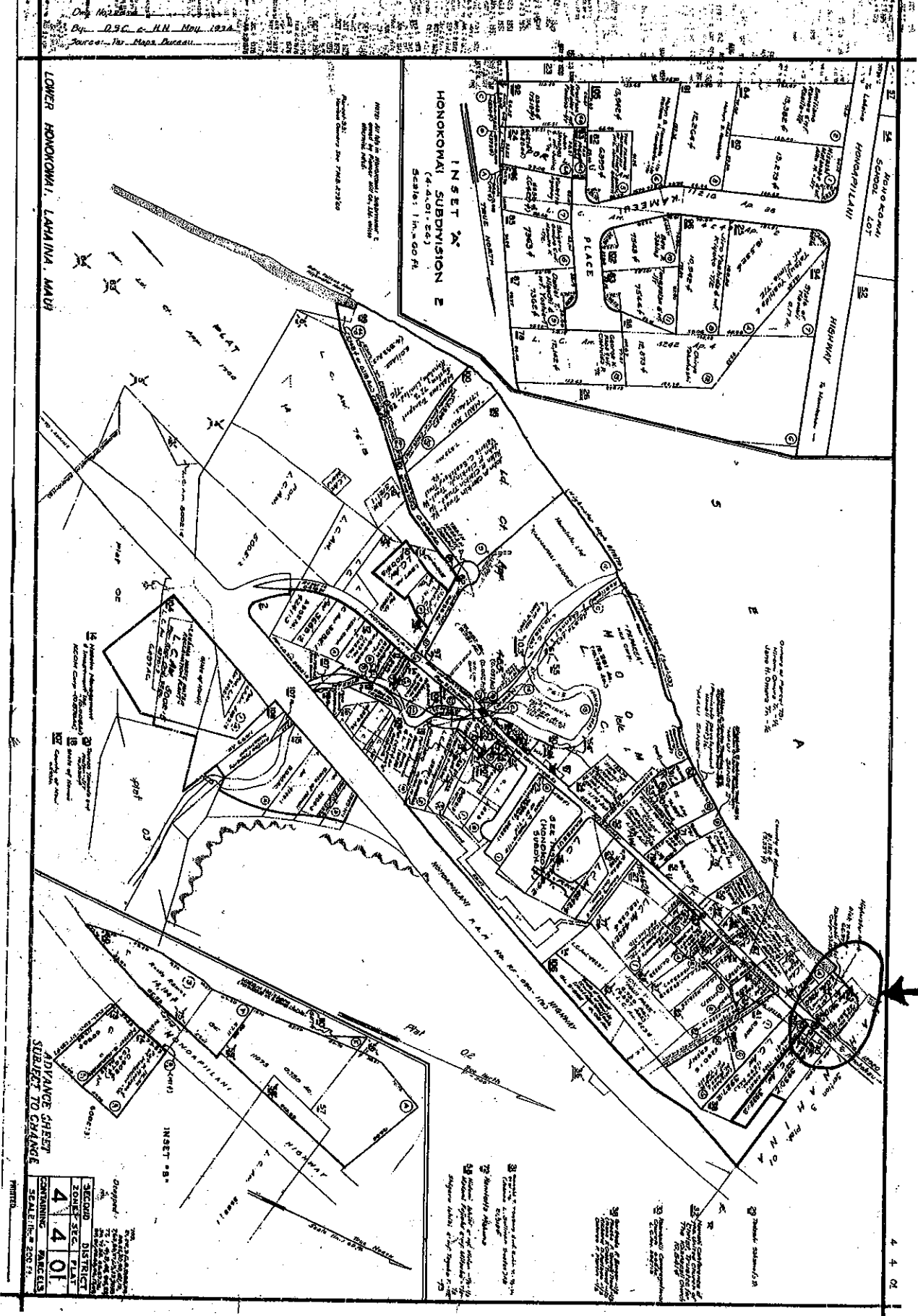
# MAUI



Approximate Location Enb. MA.08.30  
Hale Kai Condominium TMK: (2) 4-4-001:042  
Lahaina, Maui

EXHIBIT 1

Subject Parcel Twp: CD 44-001: 042  
 Hale Kai Repair

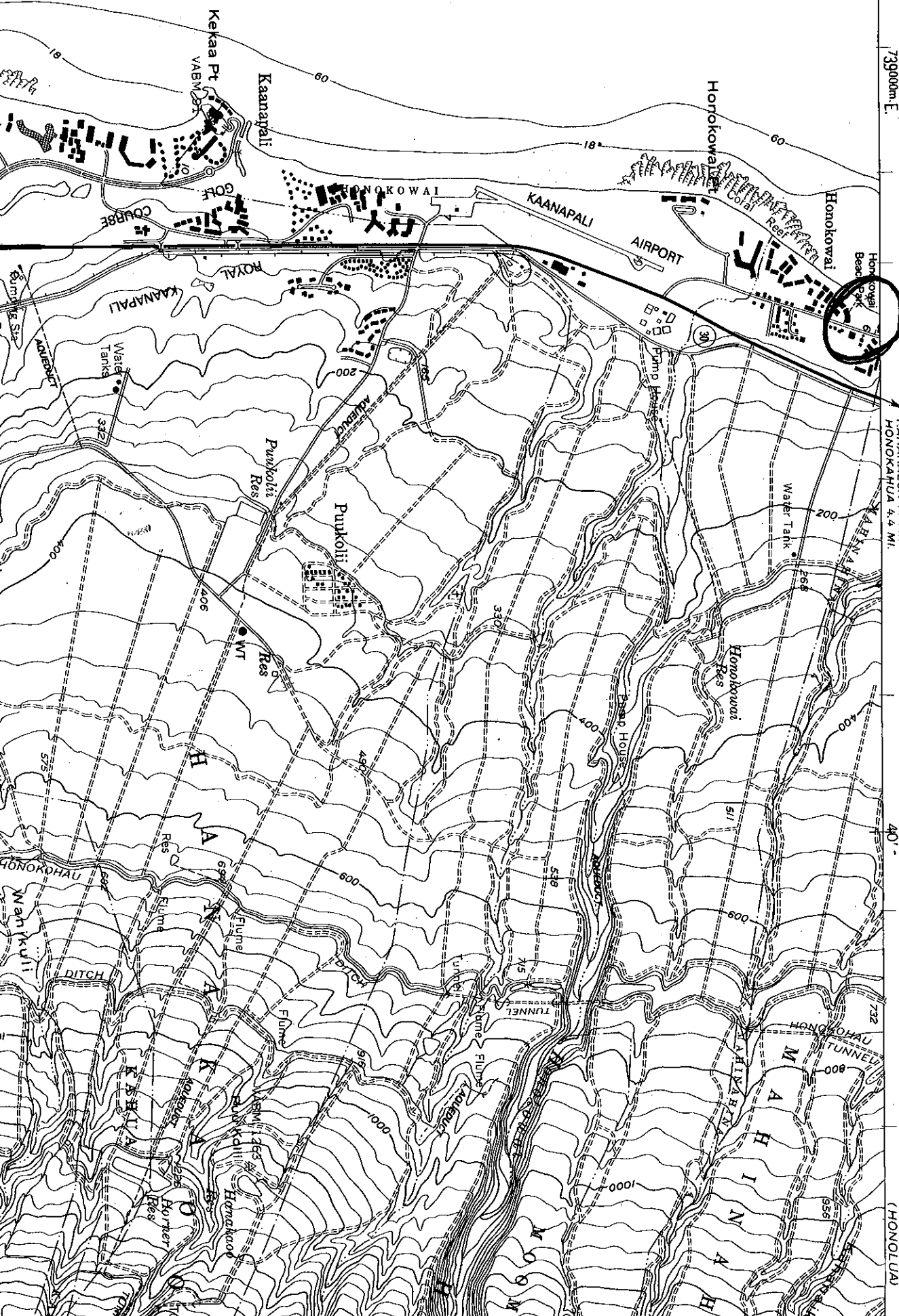




30" 739000m.E.

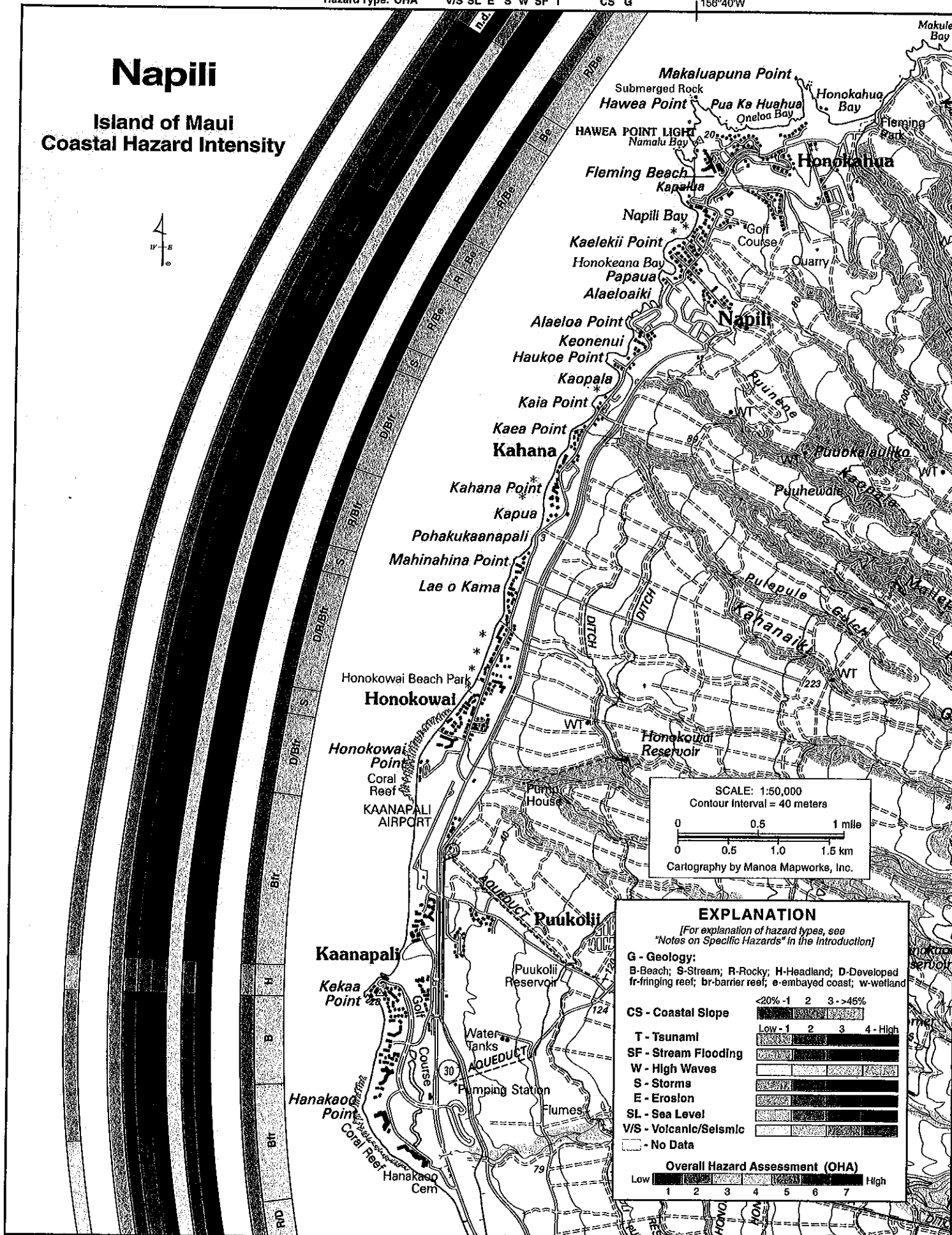
TIME: (2) 4

W



# Napili

## Island of Maui Coastal Hazard Intensity



SCALE: 1:50,000  
Contour Interval = 40 meters

0 0.5 1 mile  
0 0.5 1.0 1.5 km

Cartography by Manoa Mapworks, Inc.

### EXPLANATION

[For explanation of hazard types, see  
"Notes on Specific Hazards" in the Introduction]

#### G - Geology:

B-Beach; S-Stream; R-Rocky; H-Headland; D-Developed fringing reef; br-barrier reef; e-embayed coast; w-wetland

#### CS - Coastal Slope

T - Tsunami

SF - Stream Flooding

W - High Waves

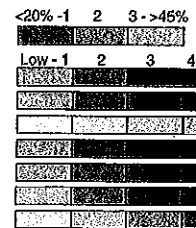
S - Storms

E - Erosion

SL - Sea Level

V/S - Volcanic/Seismic

- No Data



#### Overall Hazard Assessment (OHA)

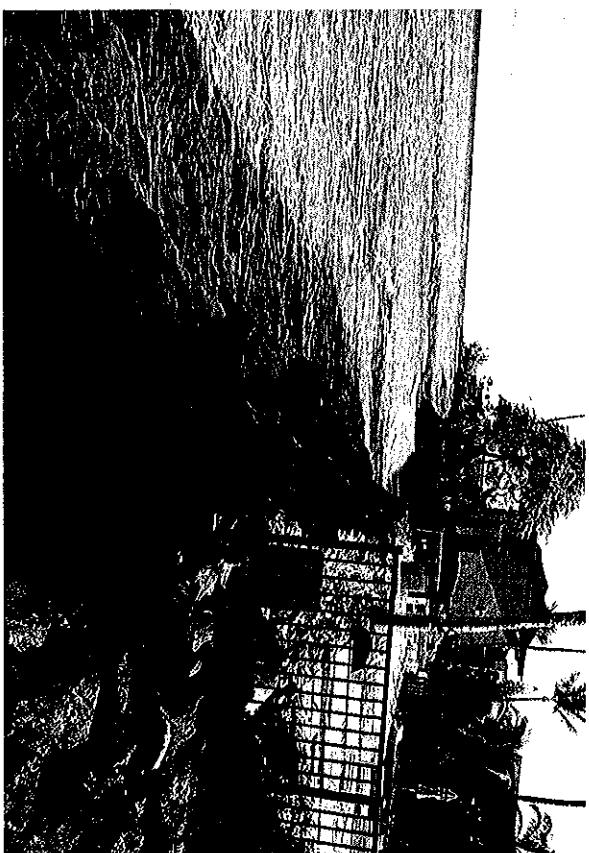
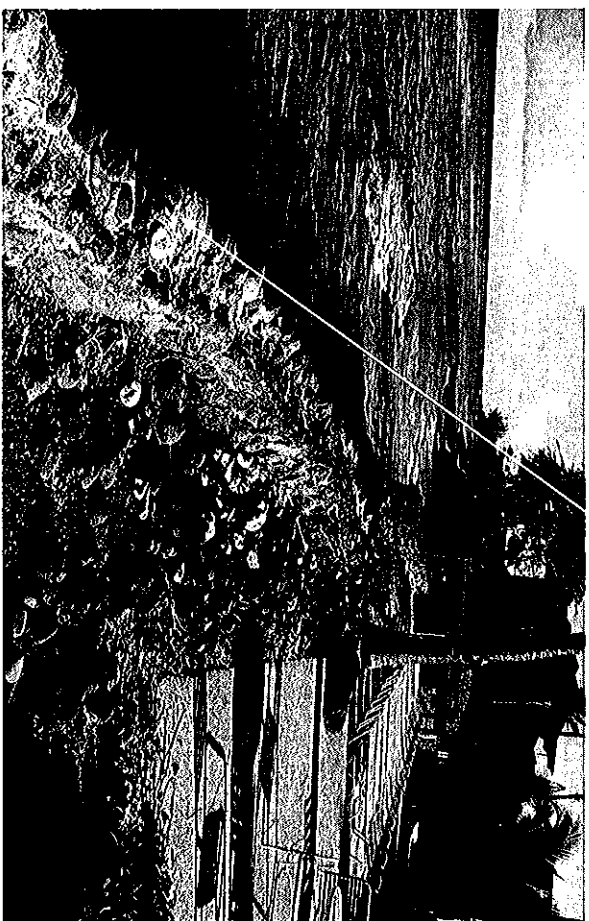
Low 1 2 3 4 5 6 7 High

Photos taken: 10/18/07



Hale Kai, TMK: (2) 4-4-001:042

Photos depict the seawall fronting the Hale Kai complex. It appears that an additional layer of rocks has been cemented onto the top of the wall in an attempt to elevate the wall's current height.



View of wall from the south facing in the northerly direction.

Complaint  
MK-08-16

LAND DIVISION  
Maui District Branch

RECEIVED  
LAND DIVISION  
CONSERVATION  
AND COASTAL  
LANDS

**COMPLAINT FORM** 2007 OCT 24 A 9:10

1. Obtain the following information (minimum) from initial call: OFFICE OF LAND & NATURAL RESOURCES OF HAWAII

Date/Time Of Call: 10/17/07, 2:00 p.m.

Received By: Larry Pacheco

Name of Caller: Officer John Dejesus (DOCARE)

Telephone: 873-3990

Address/Location: Hale Kai Resort, 3691 L. Honoapiilani Hwy. Lahaina, HI. 96761.

Tax Map Key: (2) 4-4-001:042

Additional Information (fully describe the complaint or problem): On 10/17/07 at 2:00 p.m., DOCARE Officer John Dejesus reported the following complaint. Officer J. Dejesus stated that he received a report of possible unauthorized construction or improvements being built on an existing seawall at the aforementioned property. Per his checks of the area, he reported observing newly cemented rocks along the top portion of the existing seawall. Office Dejesus requested that I conduct a check of the work being conducted to determine if it was a potential problem.

A DOCARE report will be documented with photographs and forwarded to the Office of Conservation and Coastal Lands for their review.

**Will the caller agree to allow us to release his/her name and telephone number, so the parties concerned can follow-up with the complaint?** Yes

2. Conduct Internal Review.

- a. Locate area on map(s). Attach tax map.  
b. Determine ownership. Findings and source used to verify (attach documents):

The property was identified via Tax Map Key and a topographical photo via GIS.

3. If area identified is:

Private property

- 1) Notify caller that complaint or problem involves lands privately owned, provide name of owner(s).

Date called: \_\_\_\_\_ LD Staff name: \_\_\_\_\_

Spoke to: \_\_\_\_\_

State lands under DLNR:

- 1) Provide report of what action taken. If site visit conducted, include photographs.  
On 10/18/07 at 8:00 a.m., I conducted an inspection of the seawall situated along the seaward boundary of the Hale Kai Resort. At this time, I observed what appeared to be an attempt to elevate the existing wall by cementing rocks along the top of the wall. The work appeared to be poorly done and incomplete. At the time of my checks I was not able to locate any staff or management personnel from the resort. Photos were taken for record purposes of the improvements to the seawall.
- 2) If lands are under jurisdiction of non-Land Division (e.g., DOFAW, State Parks, etc.), notify applicable DLNR agency, give location information and caller information.

Date called: \_\_\_\_\_ LD Staff name: \_\_\_\_\_  
Spoke to: \_\_\_\_\_

State lands under EO or owned by another government agency:



- 1) Notify applicable State agency; give location information and caller information

Date called: \_\_\_\_\_ LD Staff name: \_\_\_\_\_  
Spoke to: \_\_\_\_\_

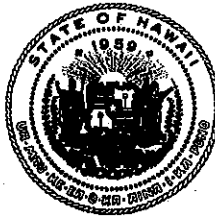
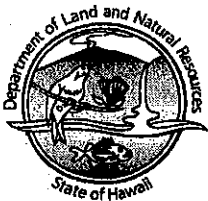
5. Obtain approval from Administrator or Assistant Administrator to close file.

Recommendation: It is recommended that a copy of this complaint be forwarded to the Office of Conservation and Coastal Lands for their review and determination on what actions should be taken to rectify this situation.

Refer to attached photos.

Submitted by: Larry Pacheco  Date: 10/18/07  
Approved by:  Date: 10/22/07

6. Maintain this form and all related documents in Oahu District files.



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

OFFICE OF CONSERVATION AND COASTAL LAND  
POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

REF:OCCL:TM  
7004 0750 0001 8229 4719

Complaint: MA 08-16

CERTIFIED RETURN RECEIPT

NOV 30 2007

John Male, AOA President  
3691 Lower Honoapiilani Hwy  
Lahaina, Maui 96761

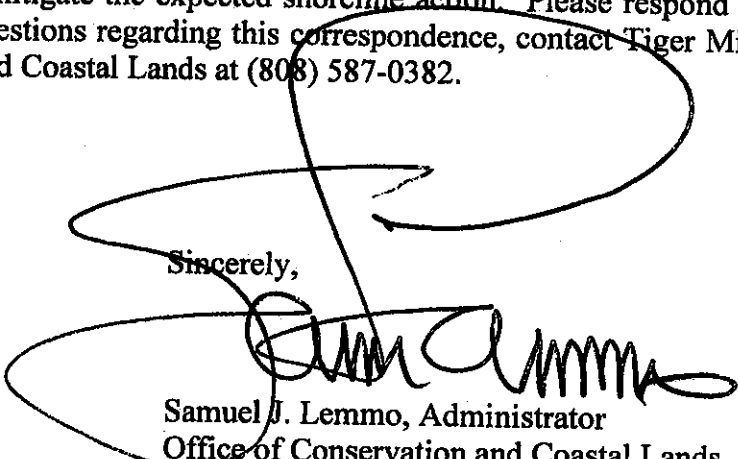
Dear Mr. Male,

SUBJECT: Alleged Unauthorized Land Use Within The Conservation District Located at Honokowai, Island of Maui, TMK: (2) 4-4-001:042

The Office of Conservation and Coastal Lands (OCCL) has become aware that an alleged unauthorized land use exists within the shoreline. It appears that improvements may have taken place within the Conservation District, Resource subzone under the jurisdiction of the State of Hawaii. We have no records of approval for the shoreline improvements (**Exhibit A**). Please provide such documentation to this Office if you have permits or authorization from the county, state or federal agencies for the improvements.

In regards to the erosion of the property, the Hale Kai may wish to consult with a coastal engineer regarding options to mitigate the expected shoreline action. Please respond within 15 days. Should you have any questions regarding this correspondence, contact Tiger Mills of our State Office of Conservation and Coastal Lands at (808) 587-0382.

Sincerely,

  
Samuel J. Lemmo, Administrator  
Office of Conservation and Coastal Lands

c: MDLO  
County of Maui, DPP

EXHIBIT 6



RECEIVED  
OFFICE OF CONSERVATION  
AND COASTAL LANDS

2007 DEC 14 A 8:26

DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

December 12, 2007

PROPERTIES, INC.

Samuel J Lemmo, Administrator  
Office of Conservation and Coastal Lands  
PO Box 621  
Honolulu HI 96809

RE: Hale Kai AOA  
TMK (2) 4-4-001:042

Aloha Mr Lemmo~

We are responding, on behalf of the Board of Directors, to your letter of November 30, 2007 regarding the alleged unauthorized land use at the property.

It is the Association's contention that all work done on the project was repair work to a pre-existing decorative wall and not the seawall. The work consisted of installation of weep holes for drainage and a trench behind the rip rap boulders lined with a filter cloth and filled with gravel. The work was done based on a recommendation by an Oah'u shoreline engineer that was received by the Association sometime ago that indicated that any work that would affect the shoreline would require a permit. The work done did not affect the shoreline and was necessary to provide adequate drainage to the property. We are endeavoring to locate the documentation.

Please do not hesitate to contact me at 669-2811 if you have any questions.

Sincerely,

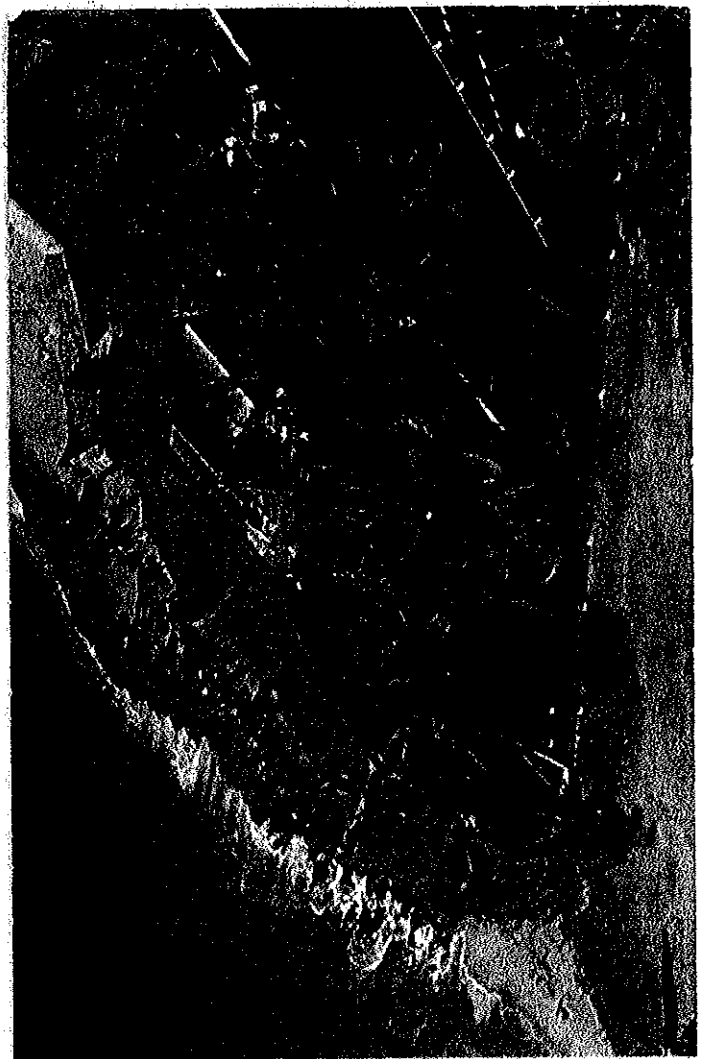
Penelope D. Munroe CMCA, AMS, R(S)  
President  
Nai'a Properties, Inc.  
Managing Agent for  
Hale Kai AOA

CC: Board of Directors  
**CERTIFIED RETURN RECEIPT**

EXHIBIT 7

4260 L. Honoapiilani Rd., Lahaina, HI 96761  
Tel: (808) 669-0402 Fax: (808) 669-0518





**HALE KAI**  
apartments

HONOLULU  
Kaanapali  
Lahaina  
MAUI

*Maui no ka oi*  
(MAUI IS THE BEST)

One mile north of Kaanapali Resort Area and Golf Course — and just five miles north of the historic whaling town of Lahaina.

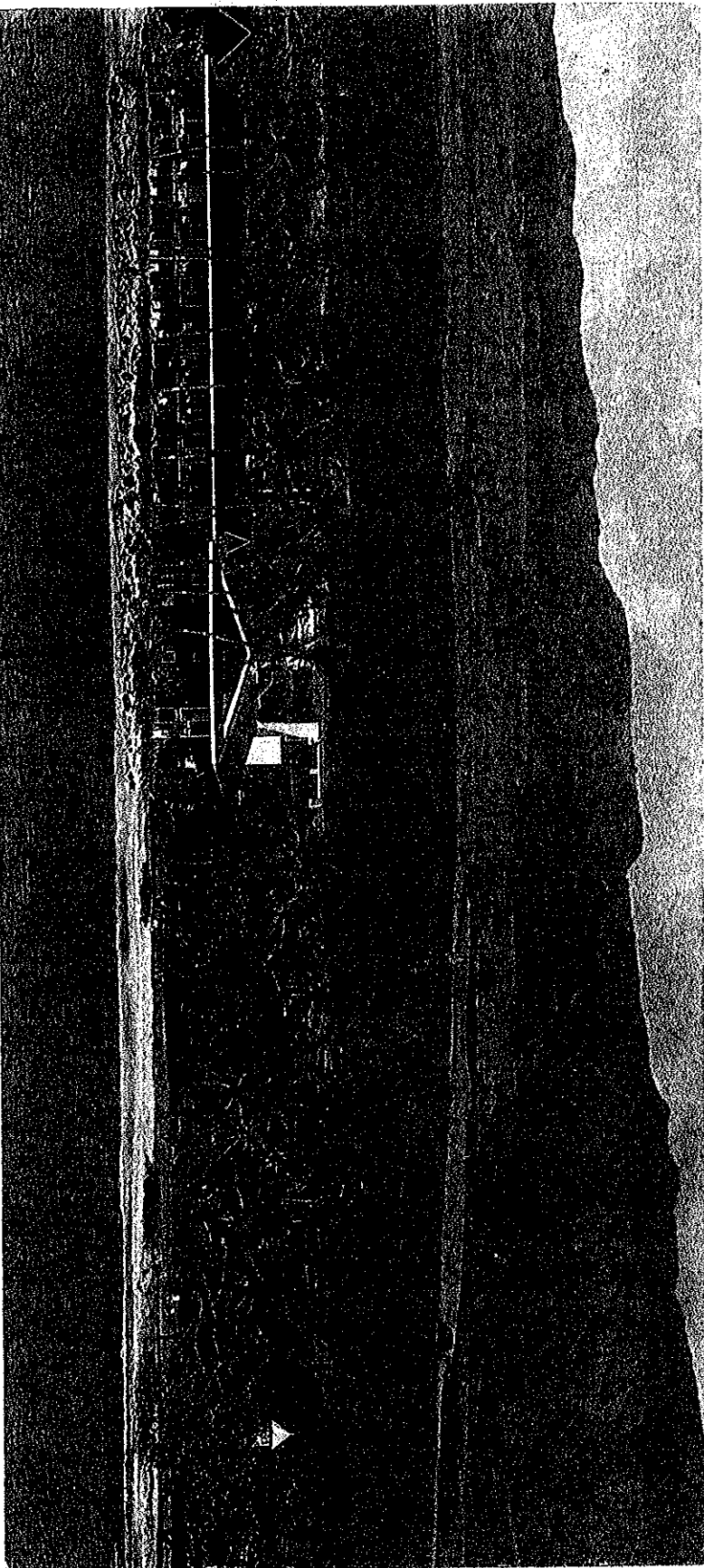
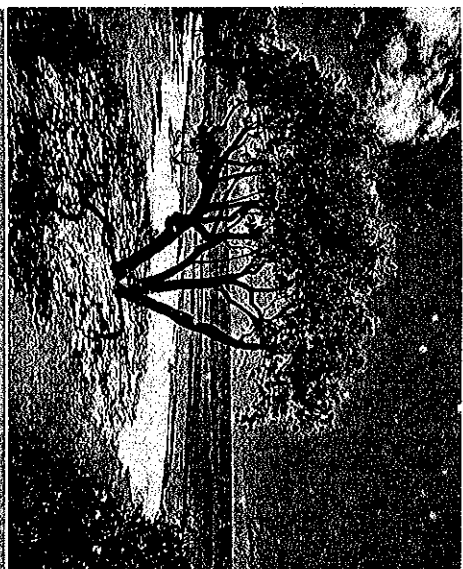


EXHIBIT 8  
"PHOTOGRAPHS"

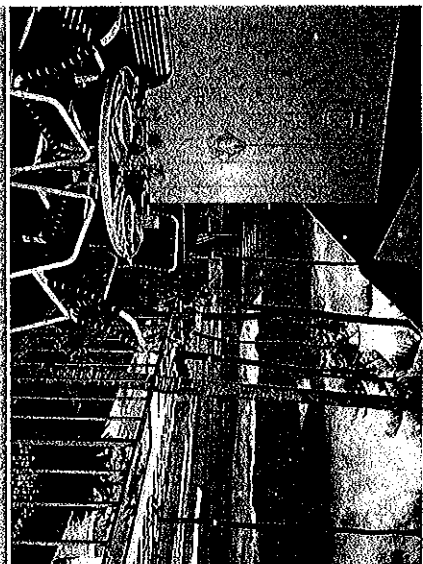
1970-84



You are so ready to go...  
You can almost feel the tropical  
water lapping at your feet, while the  
cool tradewinds caress your face.



Every unit has an ocean view!



Please contact us for reservations!

Phone (Toll Free): 1-800-446-7307

Fax: 1-808-669-7474

Hale Kai Condominiums

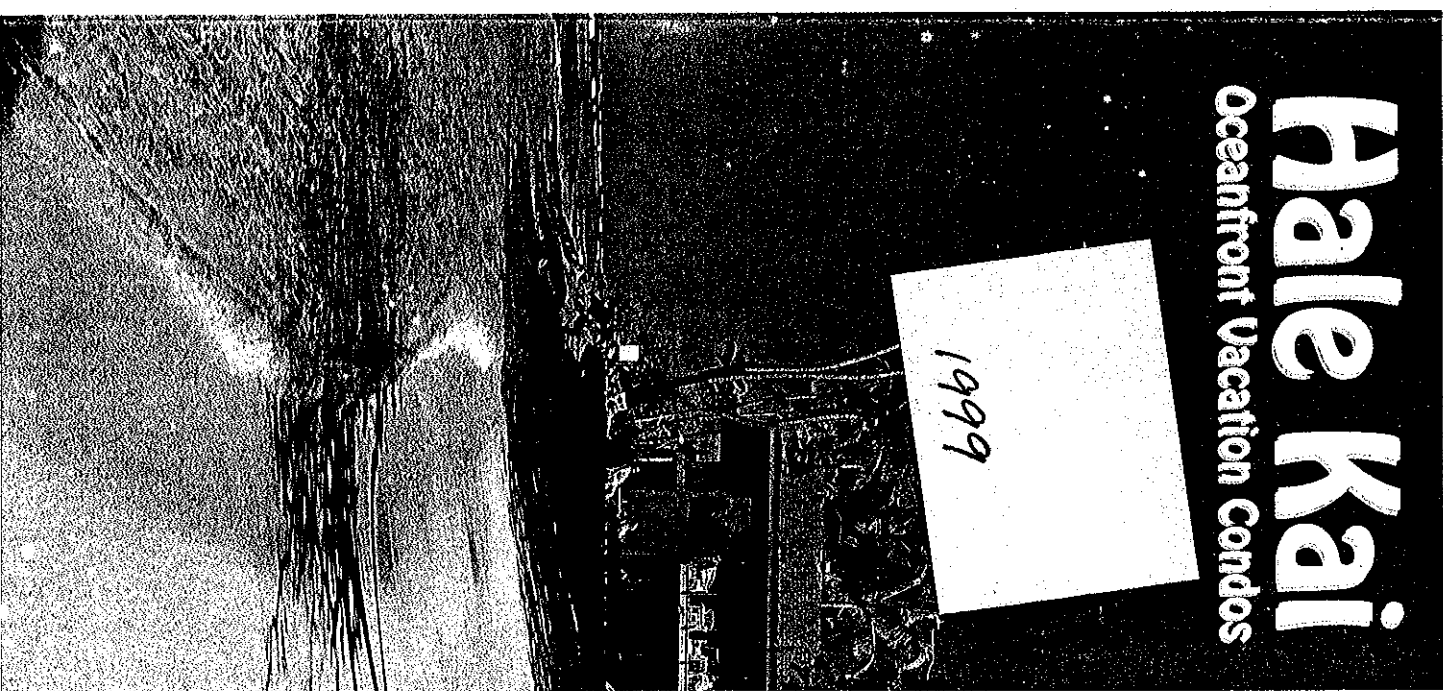
3691 Lower Honouapili Road

Lahaina, HI 96761

(808) 669-6333

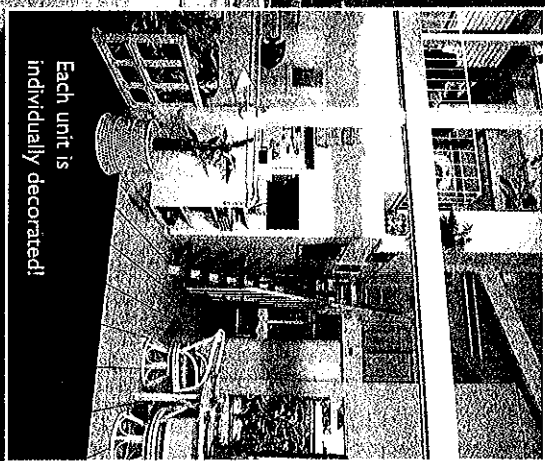
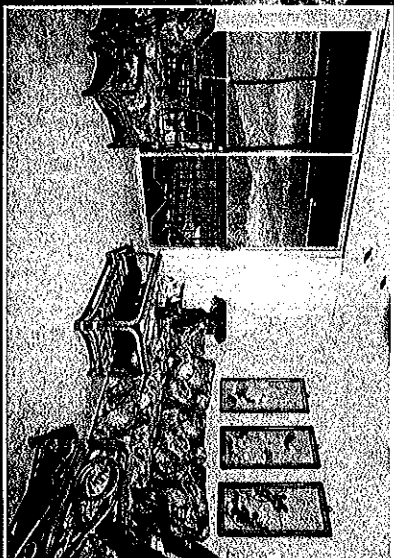
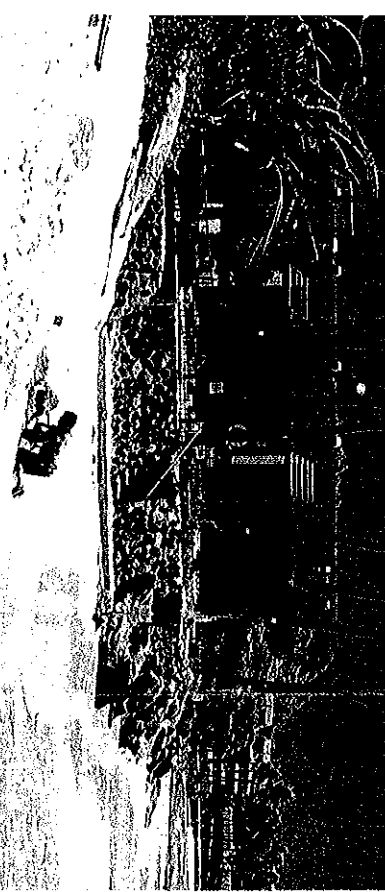
**Hale Kai**  
Oceanfront Vacation Condos

1999

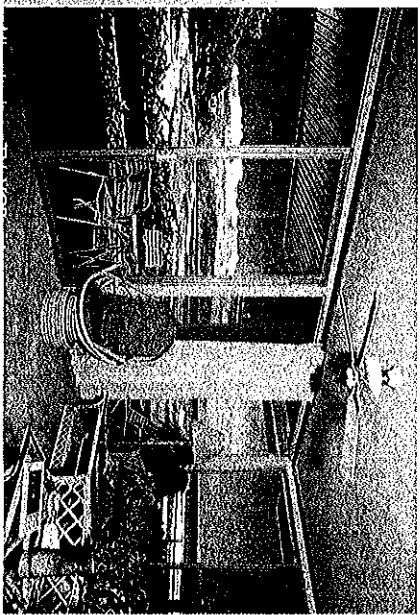


# Hale Kai

## Your Home by the Sea™



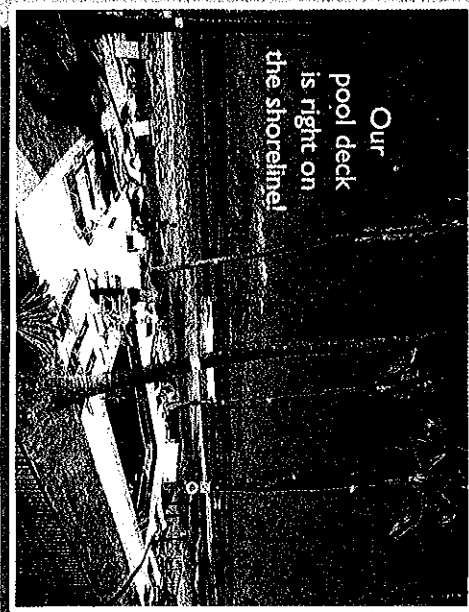
Each unit is individually decorated!



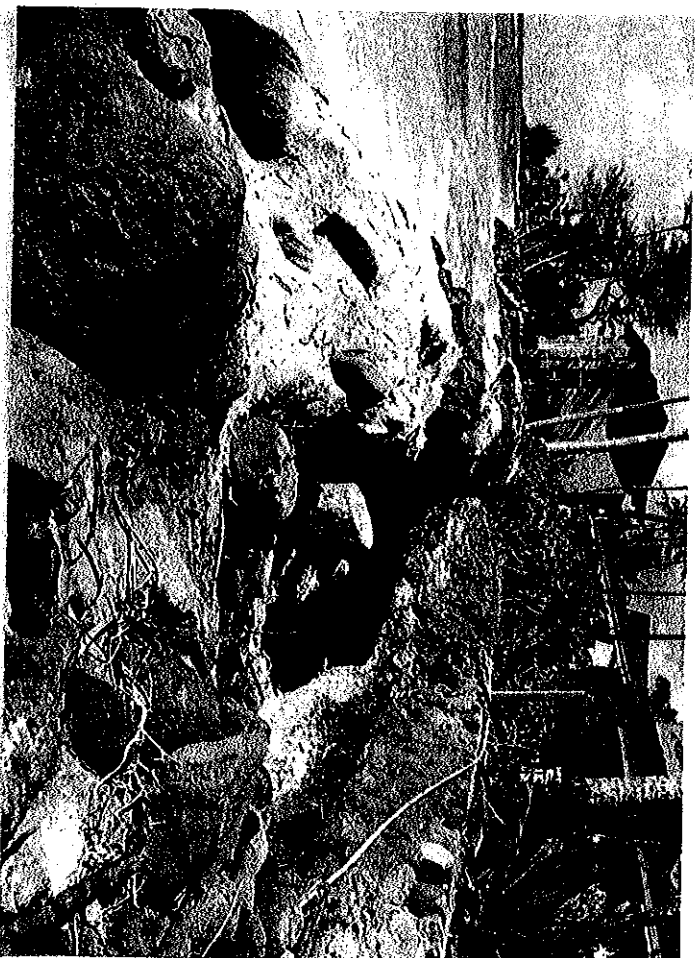
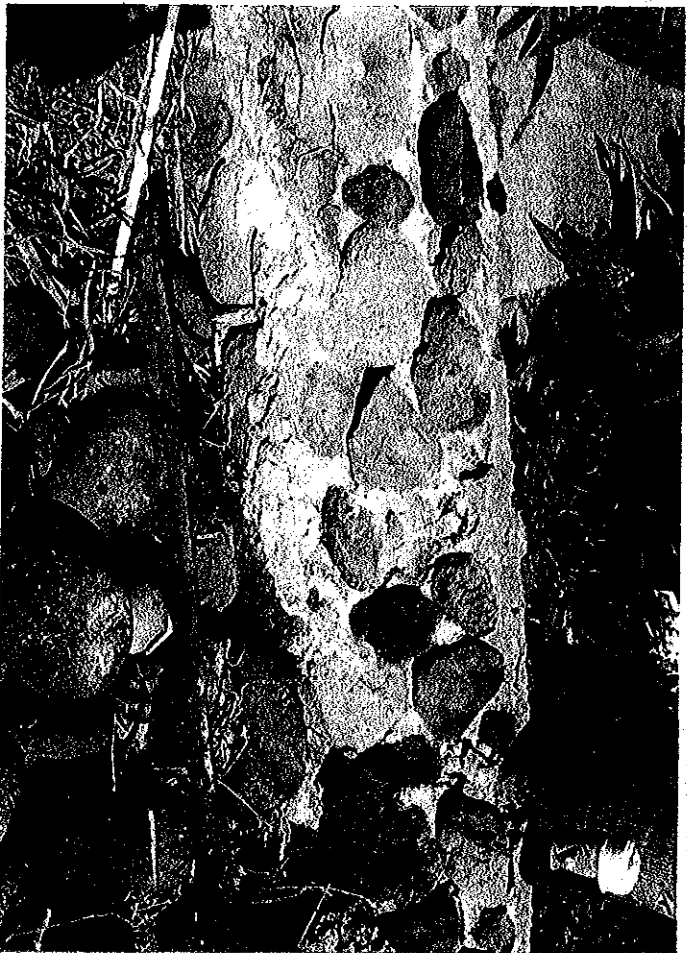
Yes, there's a lot to love about a Maui vacation when you stay at the Hale Kai. We're located between the famous resorts of Kaanapali and Kapalua. You can take your pick from the world's greatest beaches, five world renowned golf courses, Lahaina town, or any of Maui's great restaurants or other famous sightseeing attractions. Or just stay here and relax on the pool deck, amidst the beaches of the Hale Kai.

No matter what you choose to do, it's all within your reach at the Hale Kai. In no time at all, we'll have you feeling like you live here.

Our  
pool deck  
is right on  
the shoreline!



- We've got variety: 1, 2, and 3-bedroom units.
- Swimming, snorkeling, windsurfing and tidepool adventures at our oceanfront beach.
- Family & 'Five Star' dining within minutes.
- All watersports—from parasailing to scuba diving—are here on the West Side.
- Whale watching from your lanai.
- Parking and Pool just steps from your door.



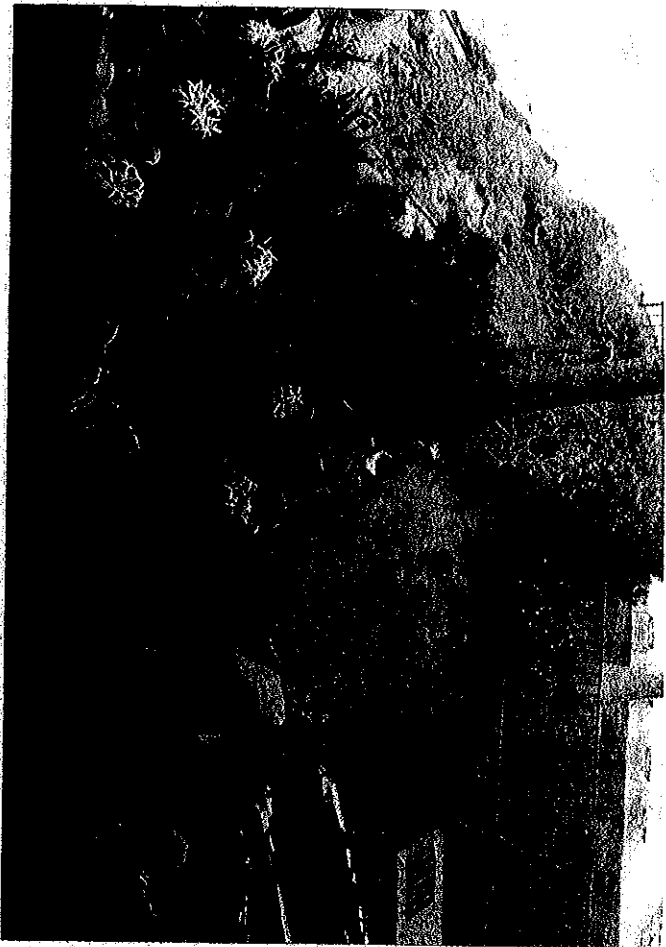
4/28/98 DIGGING OF TRENCH ON THE OCEAN SIDE  
OF WALL. 3 MEN 4 FT 25



4/29/98 CONTINUED DIGGING TRENCH  
2 MEN 3 HRS

6.

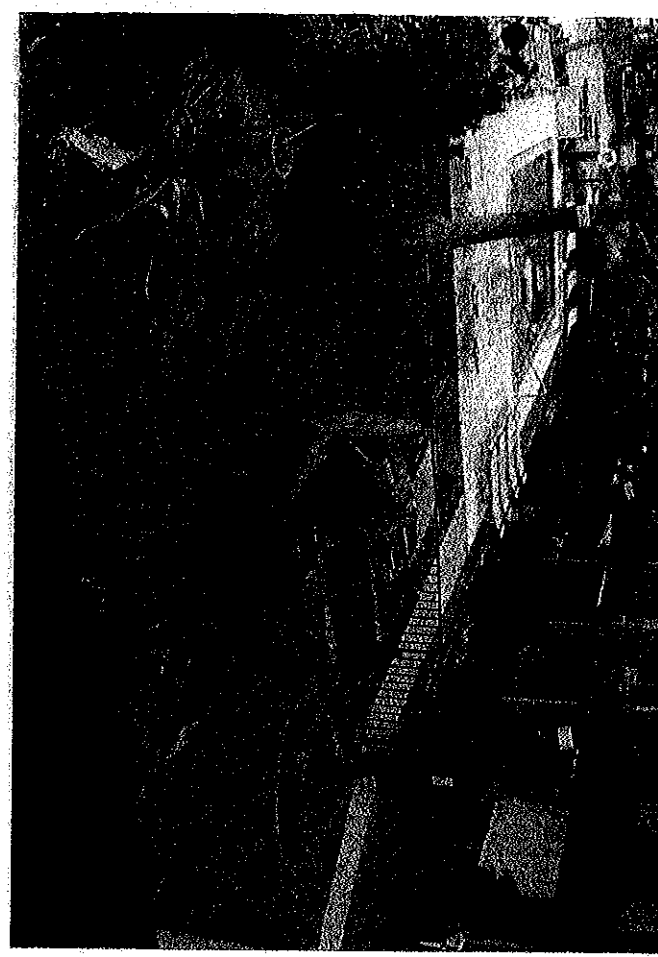




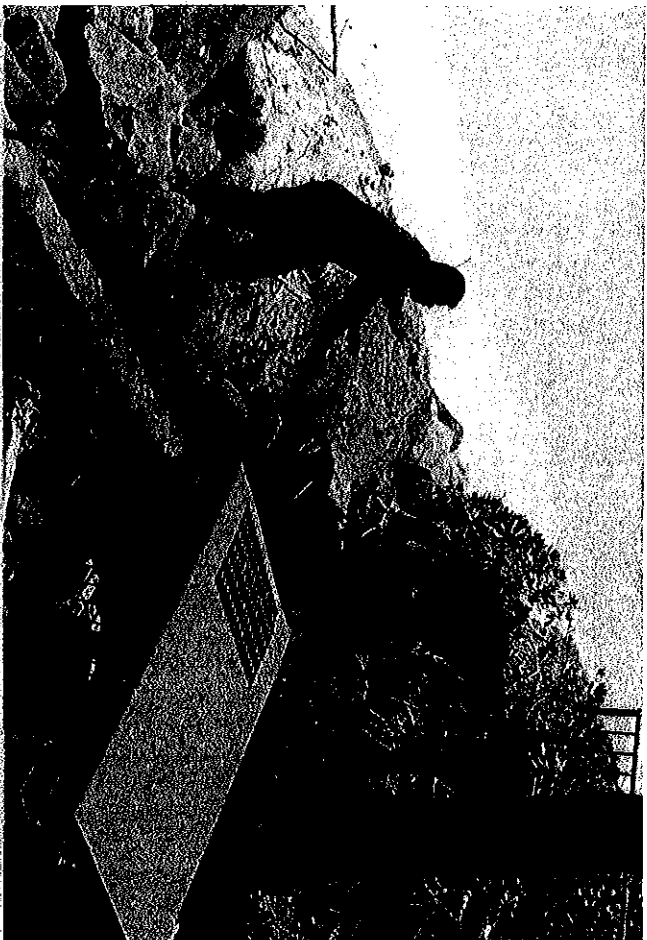
5/4/98 STARTED PUTTING ROCKS ON OCEAN  
SIDE OF WALL 2 MEN + V1 6 HRS

(7)

5/4/98

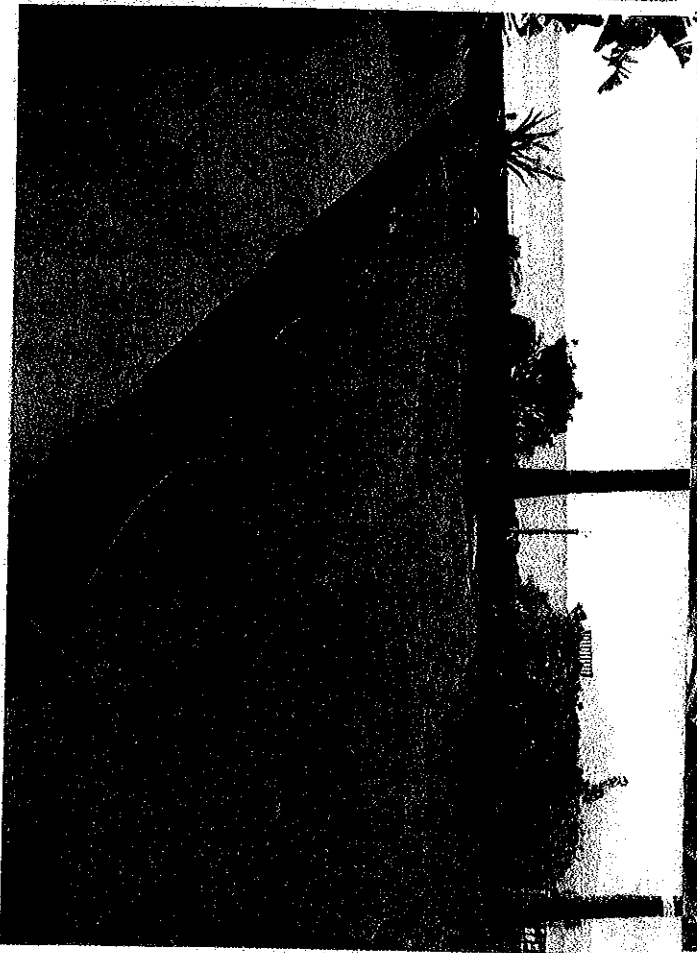
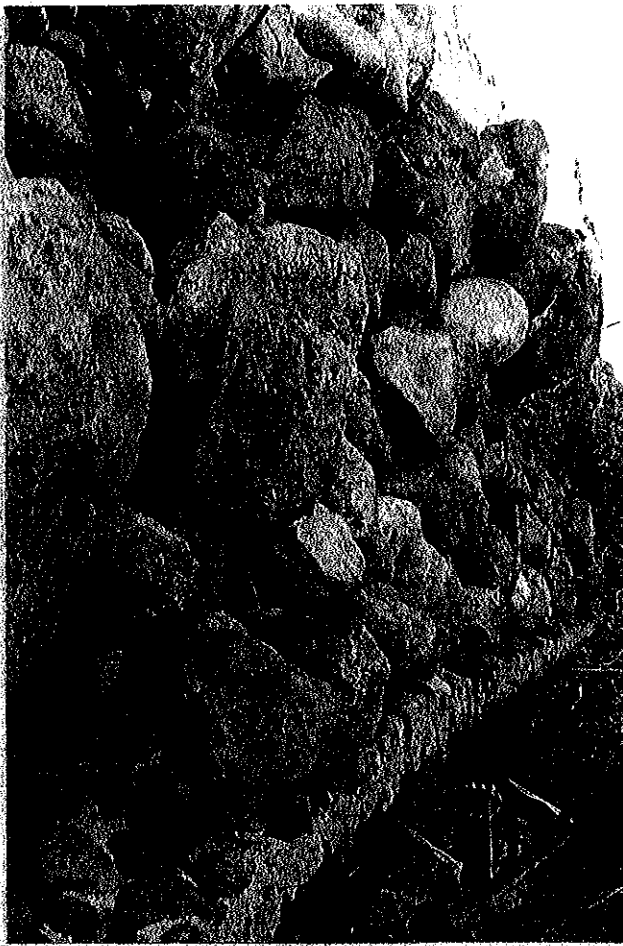


2



5/7/98 PLACED LARGE BOULDERS ON OCEAN  
SIDE OF SEA WALL 2 MEN + 16 HRS

(11.)



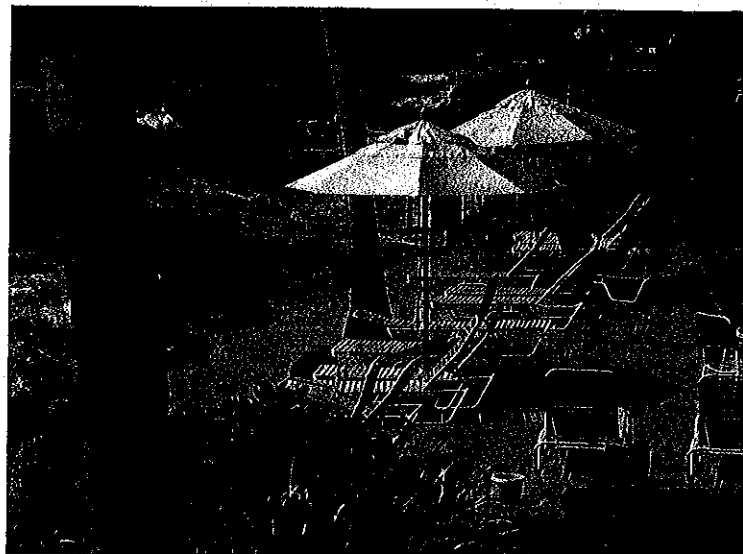
5/7/98 AFTER LARGE ROCKS WERE PLACED  
END OF MAJOR WORK ON SEAWALL REPAIR

(12.)





6/30/04.1.JPG



6/30/04.2.JPG

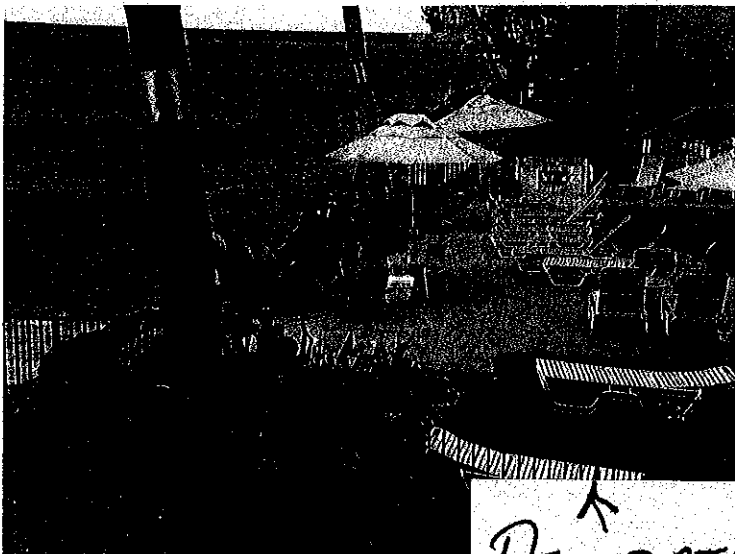


7/4/04.1.JPG



7/4/04.2.JPG

BEFORE  
DECORATIVE  
WALL



7/26/04.1.JPG

↑  
DECORATIVE  
WALL  
UNDER  
CONSTRUCTION

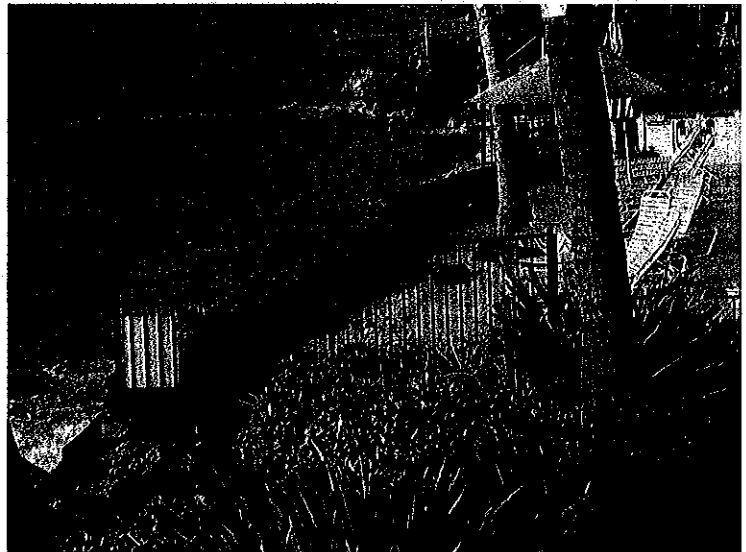


7/29/04.1.JPG



7/29/04.2.JPG

↑ ↑  
DECORATIVE  
WALL  
FINISHED

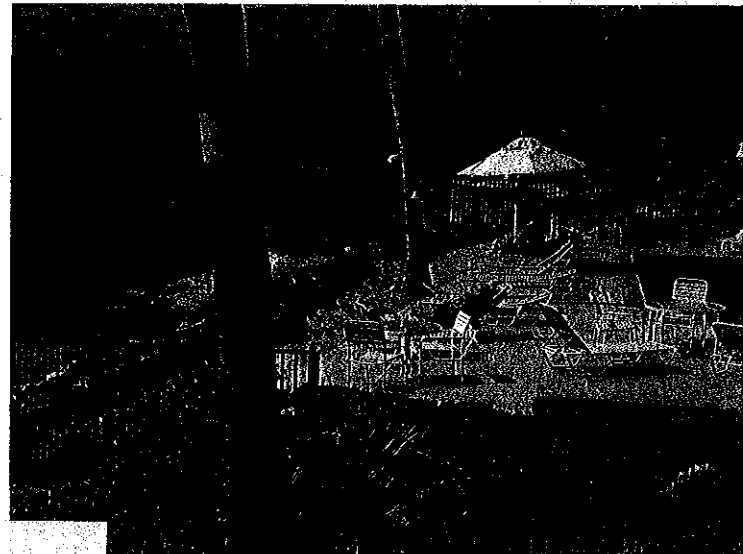


9/19/04.JPG

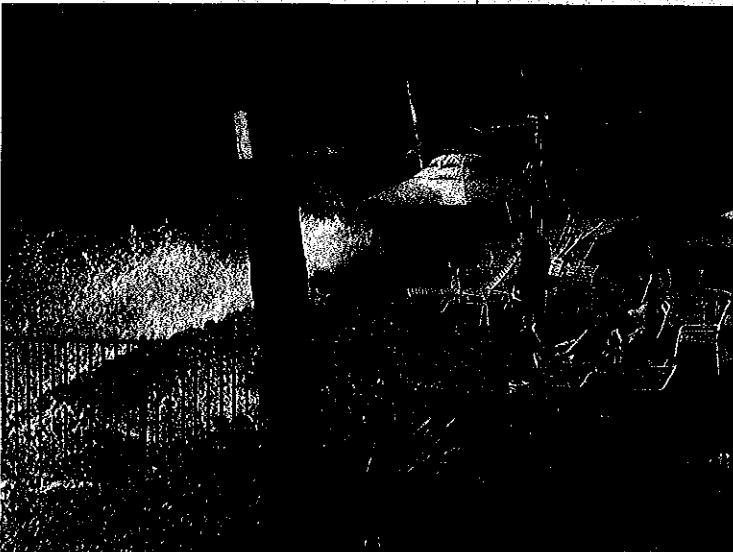


1/21/06.1.JPG

1<sup>ST</sup> RAISING  
OF DECORATIVE  
WALL HEIGHT

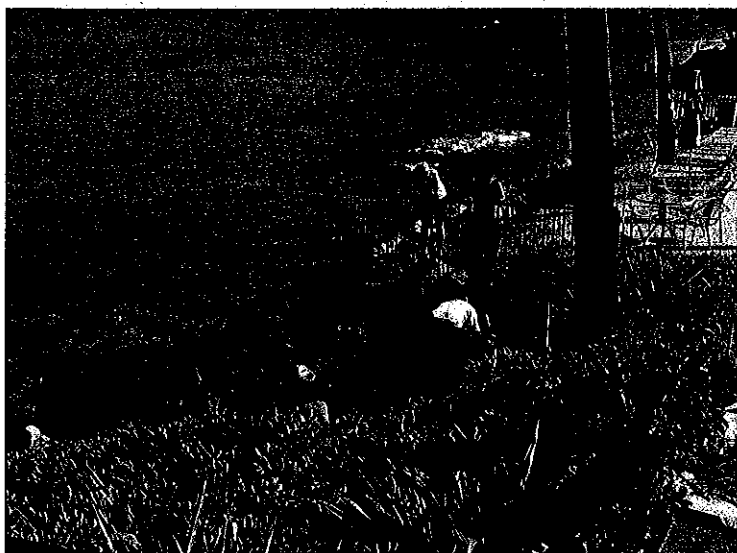


5/29/06.JPG



7/11/06.JPG

1<sup>ST</sup> RAISING OF  
HEIGHT  
FINISHED  
←



8/4/07.1.JPG

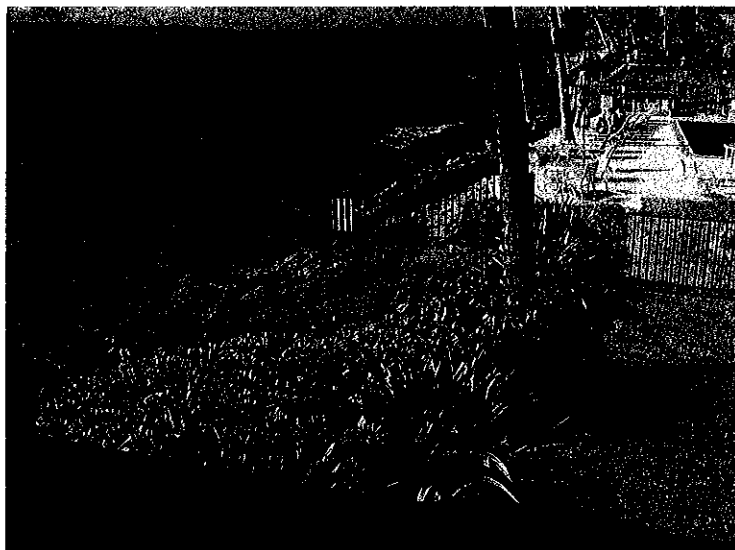


8/4/07.2.JPG



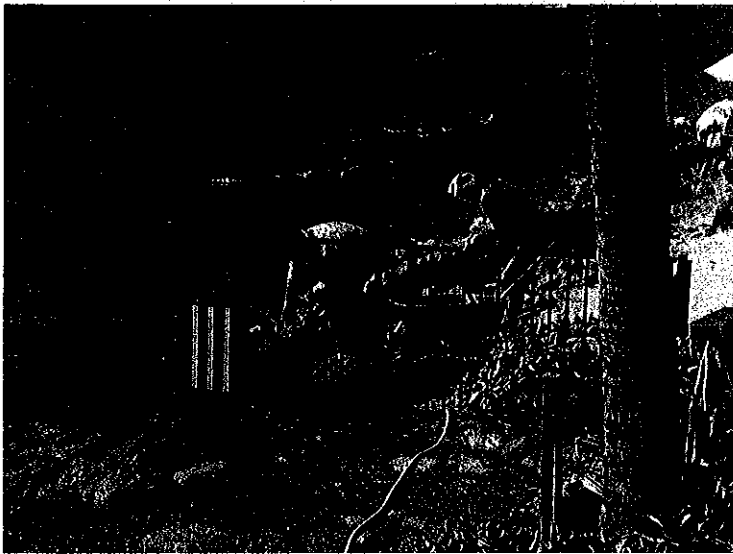
8/4/07.3.JPG

↑ ↑ ↑  
CONSTRUCTION  
OF  
FILTER FABRIC  
TRENCH

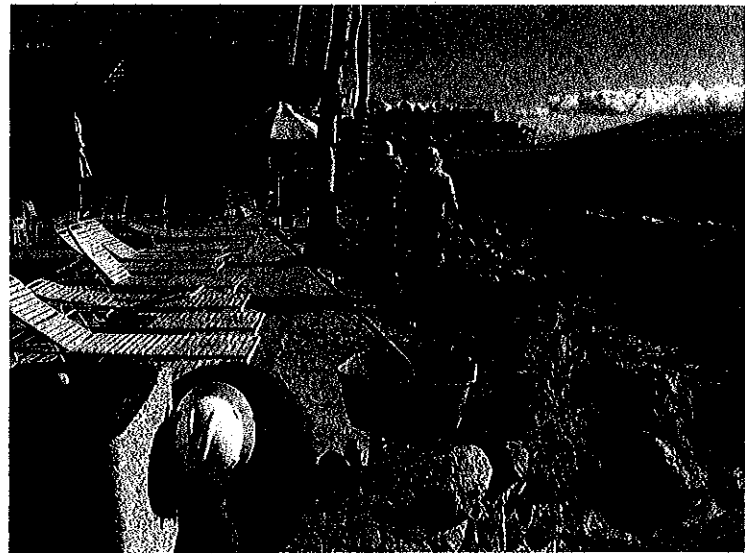


8/4/07.4.JPG

↑  
FINISHED  
TRENCH



8/8/07.1.JPG



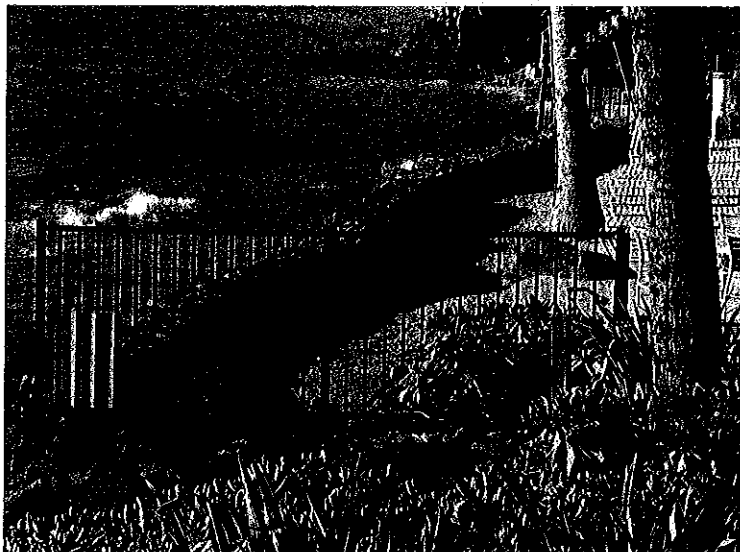
8/8/07.2.JPG

↑  
2ND RAISING  
OF WALL  
↑

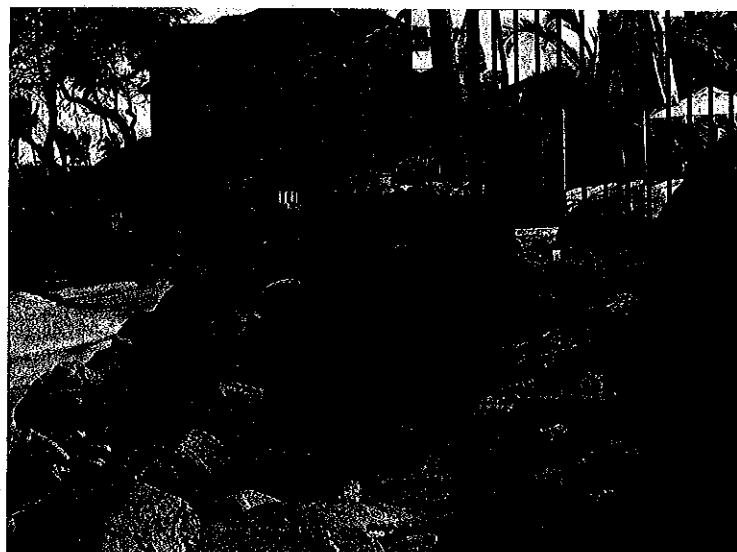


8/8/07.3.JPG

↑  
INSTALLING  
DRAIN PIPES

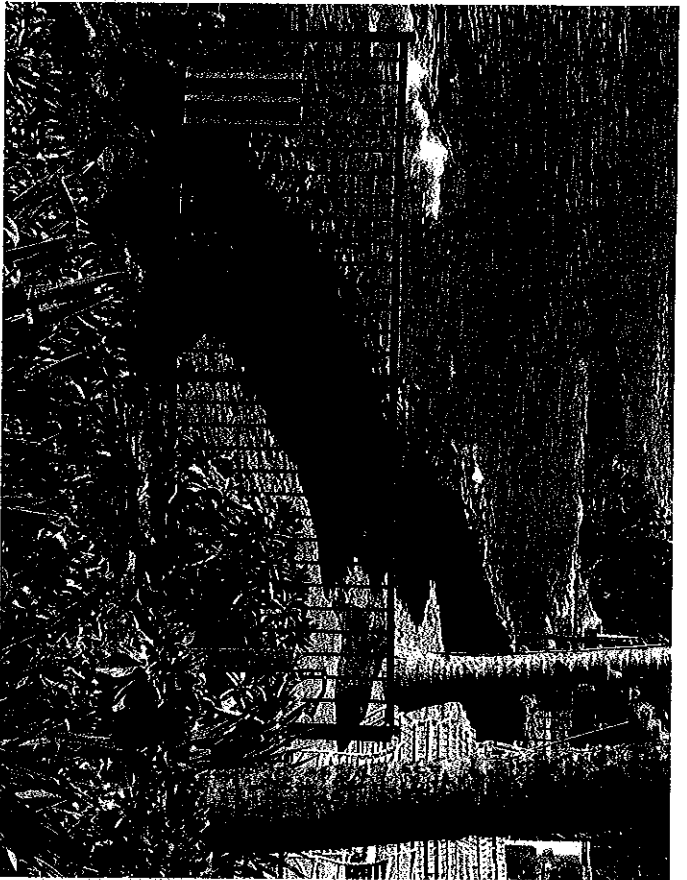


8/10/07.JPG



8/11/07.JPG

K                      ↑  
 2<sup>ND</sup> RAISING  
 OF HEIGHT  
 AND INSTALLED  
 5 DRAIN PIPES

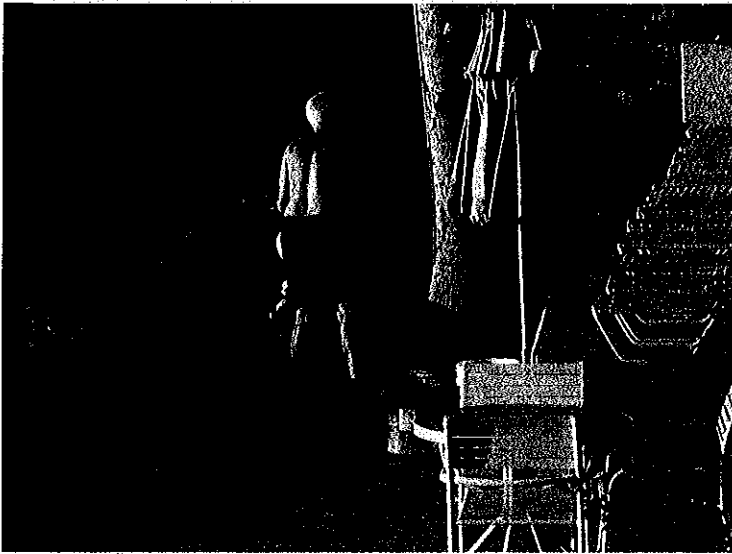


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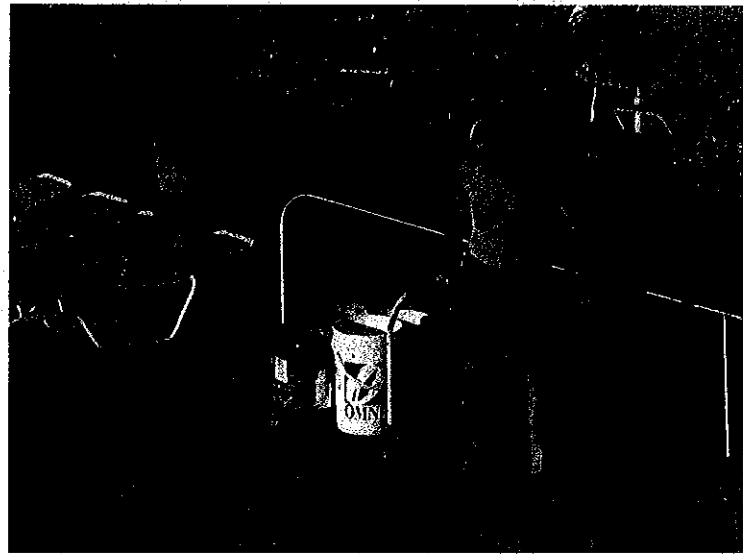
2ND RAISING

OF HEIGHT  
AND INSTALL  
DRAIN PIPES

8/11/07.JPG

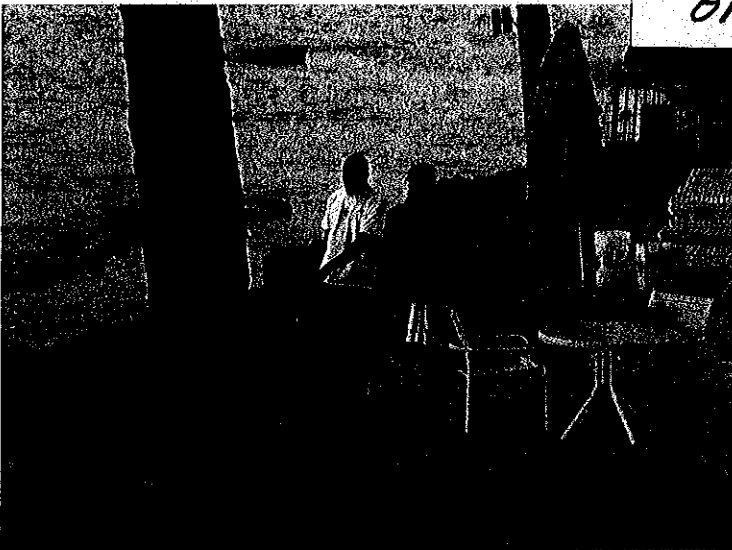


9/10/07.1.JPG



9/10/07.2.JPG

K  
JOHN MALE  
PRESIDENT  
4 5 GAL CONTAINERS  
OF ROCKS 3



9/20/07.JPG



9/25/07.JPG

DUMPING  
BEACH ROCKS  
BEHIND WALL  
JOHN MALE  
RESIDENT MANAGER



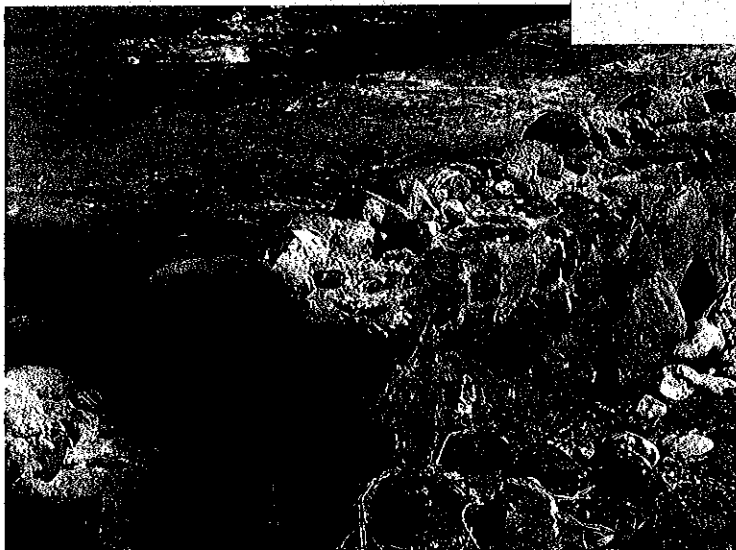


10/10/07.1.JPG



10/10/07.2.JPG

↖ ↗  
MALA + RES MGR  
RAISING HEIGHT  
3RD TIME

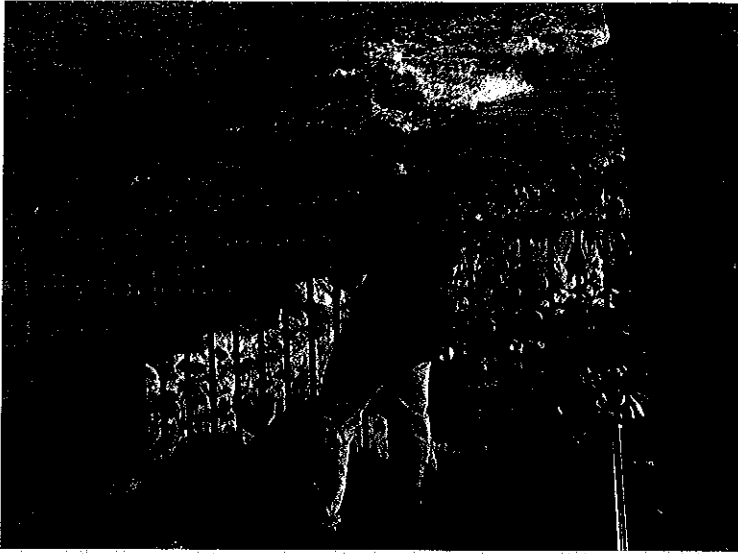


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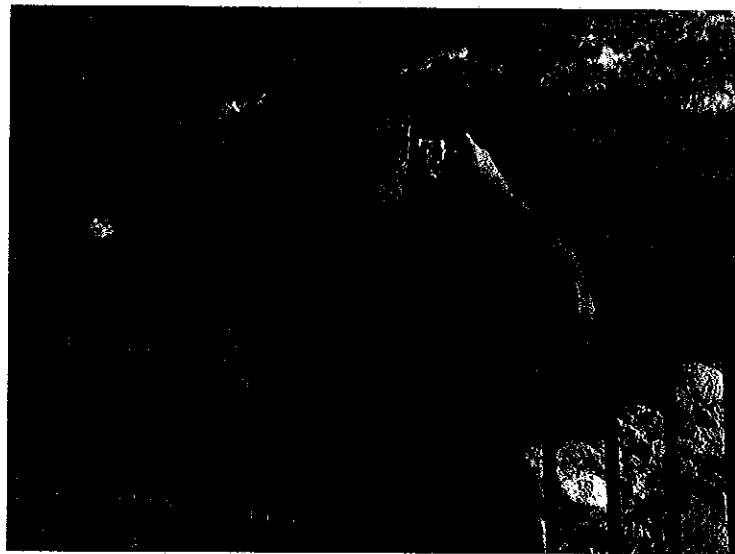


11/8/07.JPG

↖ ↗  
FINISHED  
WALL w/ BEACH  
ROCKS



10/18/07.1.JPG



10/18/07.2.JPG



10/18/07.3.JPG



10/18/07.4.JPG

OFFICER  
de JESUS

WAVE runup \*



11/15/07.1.JPG

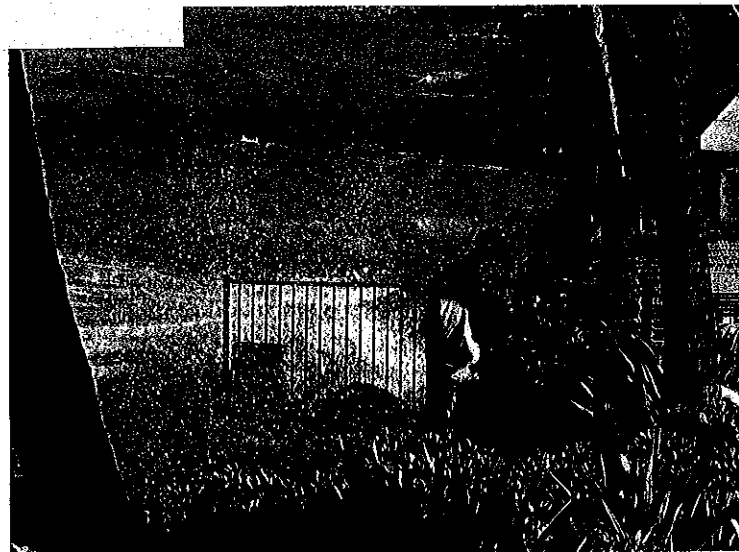


11/15/07.2.JPG

SPLASHING  
OVER WALL



11/15/07.3.JPG

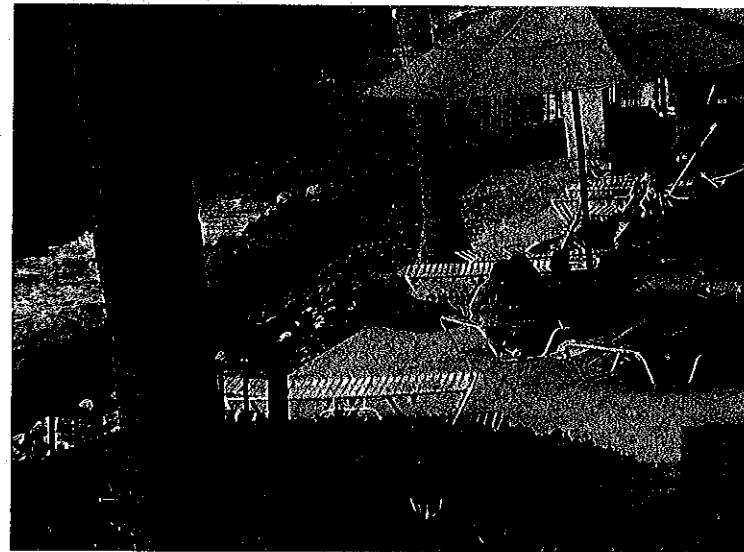


11/15/07.4.JPG

SPLASHING  
OF MAN  
ON TRENCH



3/6/08.1.JPG



3/6/08.2.JPG



3/6/08.3.JPG



3/6/08.4.JPG

3 1/2 YRS AFTER  
DECORATIVE  
WALL 43 HEIGHT  
INCREASES



**COUNTY OF MAUI  
PLANNING DEPARTMENT**

850 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793

January 13, 1993

Mr. Steve Johnson  
319 W. Cota Street  
Santa Barbara, CA 93191

Dear Mr. Johnson:

RE: Special Management Area Assessment and Shoreline Setback approval to repair an existing seawall at the Hale Kai Condominium, TMK: 4-4-1:42, Lahaina, Maui (92/SM5-016) (92/SSA-011).

In response to your application received on November 19, 1992, for a determination in accordance with the Special Management Area Rules and Regulations, Section 2-5.5(b)(6), please be advised that the above mentioned project qualifies as, "repair and maintenance to existing structures." As such, the repair of the existing seawall is exempt from SMA Rules and Regulations. \*

In addition, the project involves work within the Shoreline Setback Area. Pursuant to the Rules of the Maui Planning Commission Relating to the Shoreline Area, SS12-5-11 Structures, a structure in the shoreline area shall not need a variance if it is a structure which has been legally permitted and which is the subject of repairs valued at less than fifty percent of the current assessed value of the structure, which does not enlarge the structure nor intensify the use of the structure.

Inasmuch as the proposed improvements are less than fifty percent of the current assessed value, and does not enlarge nor intensify the use of the structure, shoreline setback approval is hereby granted subject to the following conditions:

1. That construction shall be limited to the repair and maintenance of the existing seawall and shall be in accordance with plans submitted November 19, 1992.
2. That a building permit shall be obtained prior to initiation of construction, if required.
3. That construction shall be initiated within a period of six (6) months from the date of the granting of this permit.

EXHIBIT 8 - Maui county planning dept. SMA exemption & shoreline setback letter

Mr. Steve Johnson  
January 13, 1993  
Page 2

4. That construction of the project shall be complete within one (1) year after the date of its initiation.
5. That no construction, operation of equipment, storage or materials, excavation or deposition of soil or other material shall occur seaward of the base of the existing wall.
6. That the applicant shall contact the Planning Department immediately following construction repairs of the wall to inspect said condition.
7. That full compliance with all other applicable governmental requirements shall be rendered.

Thank you for your cooperation. If additional clarification is required, please contact this office.

Very truly yours,



BRIAN MISKAE  
Planning Director

DS/sc  
cc: Buzz Upton  
LUCA (3)  
D. Suzuki

①  
KAUVAKA GROUND MAINTENANCE  
P.O. BOX 11914  
LAHAINA HI. 96761  
LIC.# C-16368  
DEC.18,1992  
PH# 667-5633

HALE KAI

Re: Sea wall Repairing.

In accordance with your request, We are pleased to submit this proposals with an estimation to repair the sea wall accordance with the drawing by Harding Lawson Associates Engineering on Oct.27,1992. It will cost us \$14000.00 to do the repairing of the sea wall. It will takes us three weeks to finish the job. There will be no working on rainy day. The three weeks means Mon. to Fri. We will supply all materials, equipments, and labor. We will repair any damage caused by our employee.

Payment:

We request 50% before the job begin and the balance at the ending of the job.

Should you have any question, please call us at 667-5633 or my digital pager 872-5227.

Yours Truly

Fale Kouvaka  
Owner

Steven A. Johnson  
319 W. Cota St.  
Santa Barbara, CA 93101

Brian Miskae  
Planning Department, County of Maui

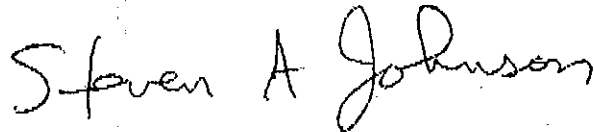
Building Department, County of Maui

Dear Sirs:

As a member of the Hale Kai Board of Directors, I have received authorization from the entire Board to seek a permit for repairs to our seawall, as described in a letter and plans from our engineering consultant (Harding-Lawson). Our resident manager, Buzz Upton, will be submitting the necessary application forms and coordinating the work to be done.

Please contact me by phone or letter if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Steven A. Johnson". The signature is written in dark ink and is positioned below the word "Sincerely,".

Home: 805-962-1895  
Work: 805-685-4455



# Harding Lawson Associates

## Service Agreement



22027

### PARTIES

This Agreement is made this 12th day of February, 19 93 between Hale Kai Association, ("Client"), a Delaware corporation, and Harding Lawson Associates ("HLA"), a Delaware corporation.

### SCOPE OF SERVICES

The scope of the services ("Services") and estimated time and schedule are described in HLA's transmittal letter dated February 12, 1993,

which <sup>is</sup>~~are~~ attached to and incorporated in this Agreement as Attachment A.

### PROJECT

Client retains HLA to provide Services in connection with Hale Kai Sea Wall; Lahaina, Maui, Hawaii

("Project").

### FEE

in accordance to  
transmittal letter dated  
February 12, 1993

As compensation for Services performed, Client shall pay HLA \$ February 12, 1993 (the "Fee").

The method of charging for services shall be a time and expenses basis according to the Schedule of Charges as in effect when the Services are performed, attached hereto and incorporated in the Agreement as Attachment B. Where the Fee is "not to exceed" a specified sum, HLA shall notify client before such sum is exceeded and shall not exceed such sum unless Client authorizes an increase in the Fee in writing.

# **HARDING LAWSON ASSOCIATES GENERAL CONDITIONS**

## **1. PAYMENT**

HLA shall invoice client periodically for the Services performed under this Agreement. Invoices shall clearly describe the project name, the services rendered, HLA's job number and any Client required data. Invoices must be paid within 30 days of the invoice date and if not paid within such time shall be subject to a late payment charge of the lower of 1 1/2 percent per month or the highest rate permitted by law.

## **2. INDEPENDENT CONTRACTOR STATUS**

In performing Services under this Agreement, HLA shall operate as, and have the status of, an independent contractor and shall not act as or be an employee of Client.

## **3. PROFESSIONAL RESPONSIBILITY**

Subject to any limitations established by the Client as to the degree of care and amount of time and expenses to be incurred and any other limitations contained in this Agreement, HLA shall perform the Services consistent with that level of care and skill ordinarily exercised by other professional consultants under similar circumstances at the time the Services are performed. Client hereby acknowledges that whenever a Project involves hazardous or toxic materials there are certain inherent risk factors involved (such as limitations on laboratory analytical methods, variations in subsurface conditions and the like) which may adversely affect the results of the Project, even though the Services are performed with such skill and care. No other representation, warranty or guarantee, express or implied, is included or intended by this Agreement.

## **4. LIMITATION OF LIABILITY**

Client agrees that the liability of HLA and all officers, employees, agents and subcontractors of HLA (the "HLA Parties") to Client for all claims, suits, arbitrations or other proceedings arising from the performance of the Services under this Agreement, including, but not limited to, HLA's professional negligence, errors and omissions or other professional acts, shall be limited to an aggregate of \$100,000 or the Fee, whichever is greater.

## **5. INDEMNIFICATION**

Client shall indemnify, defend, and save harmless the HLA Parties, from any claim, suit, liability, damage, injury, expense, including attorney's fees, or other loss (collectively called "Loss") arising out of (a) breach of this Agreement by Client, (b) Client's willful misconduct or negligence in connection with the performance of this Agreement, (c) any actual or potential environmental pollution or contamination, including, without limitation, any actual or threatened release of toxic or hazardous materials, failure to detect or properly evaluate the presence of such substances; or (d) any action taken by HLA Parties as Client's agent under the section entitled Reporting and Disposal Requirements.

HLA shall indemnify, defend, and save harmless Client, from any Loss arising out of (a) breach of this Agreement by HLA Parties or (b) willful misconduct or negligence by HLA Parties in connection with the performance of the Services under this Agreement.

Allocation of Loss between Client and HLA Parties shall be on a comparative fault basis. In no event shall any party be liable for consequential damages.

## **6. HAZARDOUS OR UNSAFE CONDITIONS**

Client has fully informed HLA of the type, quantity, and location of any hazardous, toxic, or dangerous materials or unsafe or unhealthy conditions which may affect the Project which Client knows to exist. If client hereafter becomes aware of any such information, Client shall immediately inform HLA. The discovery of unanticipated hazardous, toxic or dangerous materials or unsafe or unhealthy conditions constitutes a Changed Condition which may justify a revision to Services. If HLA takes emergency measures to protect the health and safety of HLA Parties and/or the public or to prevent undue harm to the environment, the Fee shall be appropriately adjusted to compensate HLA for the cost of such emergency measures.

## **7. INSURANCE**

HLA shall maintain during the performance of the Services, if reasonably available, (1) statutory Workers' Compensation/ Employer's Liability coverage; and (2) Comprehensive General/Professional and (3) Automobile liability insurance coverage in policy amounts in the aggregate of not less than \$1,000,000 each.

## **8. RIGHT OF ENTRY**

Client agrees to grant or arrange permission for right of entry from time to time by HLA Parties upon all real property sites where the Services are to be performed (the "Project Site(s)"), whether or not the Project Site(s) is owned by Client. Client recognizes that the use of investigative equipment and practice may unavoidably alter conditions or affect the environment at the existing Project Site(s). HLA will operate with reasonable care to minimize damage to the Project Site(s). The cost of repairing such damage will be borne by Client, and is not included in the Fee unless otherwise stated.

## **9. UNDERGROUND UTILITIES**

Client shall correctly designate on plans to be furnished to HLA, the location of all subsurface structures, such as pipes, tanks, cables and utilities within the property lines of the Project Site(s) and shall be responsible for any damage inadvertently caused by HLA to any such structure or utility not so designated. Client warrants the accuracy of any information supplied by it to HLA, acknowledges that HLA may not verify the accuracy of such information and agrees that HLA is entitled to rely upon any information supplied by Client.

## **10. REPORTING AND DISPOSAL REQUIREMENTS**

Nothing contained in this Agreement shall be construed or interpreted as requiring HLA to assume the status of an owner, operator, generator, person who arranges for disposal, transporter, storer, treatment or disposal facility as those terms appear within any federal or state statute governing the treatment, storage, and disposal of hazardous substances or wastes. Client shall be solely responsible for notifying all appropriate federal, state, municipal or other governmental agencies of the existence of any hazardous, toxic or dangerous materials located on or in the Project Site(s), or discovered during the performance of this Agreement. Client shall be responsible for making and paying for all necessary arrangements to lawfully store, treat, recycle, dispose of or otherwise handle hazardous or toxic substances or wastes, including, but not limited to, samples and cuttings, to be handled in connections with the Project. HLA may, in its sole discretion, agree to make such arrangements on behalf of Client, as Client's agent.

## **11. SAMPLES AND CUTTINGS**

HLA shall not be obligated to preserve such soil, rock, water and other samples obtained from the Project Site(s) as HLA deems necessary for no longer than forty-five (45) days after the issuance of any document that includes the data obtained from those samples.

## **12. HEALTH AND SAFETY**

HLA shall not be responsible for the health and safety of any persons other than HLA Parties, nor shall it have any responsibility for the operations, procedures or practices of persons or entities other than HLA Parties.

## **13. SUBCONTRACTORS**

HLA may subcontract for the services of others without obtaining Client's consent where HLA deems it necessary or desirable to have others perform certain Services. If HLA deems it necessary or desirable to obtain Client's advance concurrence with any proposed subcontractor, HLA may make a written request to review the qualifications and suggested scope of work to be performed by such proposed subcontractor and Client shall either grant or deny such concurrence within a reasonable time after receipt of such a request.

## **14. ASSIGNMENT**

Except as expressly provided for in this Agreement, neither Client nor HLA may delegate, assign, sublet or transfer duties or interests in this Agreement without the written consent of the other party.

## **15. TERMINATION**

Client may terminate this Agreement at any time upon thirty (30) days written notice. Either Client or HLA may terminate this Agreement in the event of a material breach which remains uncured ten (10) days after receipt of written notice by the other party. In the event of termination, Client shall pay HLA for the Services performed prior to the termination notice date, and for any necessary Services and expenses incurred in connection with the termination of the Project, including but not limited to, the cost of completing analysis, records and reports necessary to document job status at the time of termination and costs associated with termination of subcontractor contracts.

The obligations of the parties to indemnify, and the limitations on liability established, under this Agreement shall survive the expiration or termination of this Agreement.

## **16. SUSPENSIONS AND DELAYS**

Client may, at any time, by ten (10) days written notice, suspend performance of all or any part of the Services by HLA. HLA may terminate this Agreement if Client suspends HLA's work for more than sixty (60) days. In the event HLA field or technical work is suspended by client or interrupted due to delays other than delays caused by HLA, the time for completion of the performance of the Services shall be appropriately adjusted and HLA shall be equitably compensated (in accordance with HLA's current Schedule of Charges) for the additional labor, equipment and other charges associated with maintaining its workforce for Client's benefit during the delay or suspension, or at the option of Client, for such similar charges that are incurred by HLA for demobilization and subsequent remobilization.

Except for the foregoing provision, neither party shall hold the other responsible for damages or delays in performance caused by force majeure, acts of God, or other events beyond the control of the other party or that could not have been reasonably foreseen and prevented. Delays within the scope of this paragraph which cumulatively exceed forty-five (45) days are deemed a Changed Condition under this Agreement.

## 17. CHANGED CONDITIONS

If, during the course of the performance of the Services under this Agreement, conditions or circumstances develop or are discovered which were not contemplated by HLA at the commencement of this Agreement, and which materially affect HLA's ability to perform the Services or which would materially increase the costs to HLA of performing the Services, then HLA shall notify Client in writing of the newly discovered conditions or circumstances, and Client and HLA shall renegotiate, in good faith, the terms and conditions of this Agreement. If amended terms and conditions cannot be agreed upon within 30 days after notice, HLA may terminate this Agreement and be compensated as set forth under Termination, above.

## 18. CONFIDENTIALITY

All documents, reports, disclosures, plans and other information of any nature and description which Client supplies to HLA or which HLA discovers or develops in performance of the Services under this Agreement shall be deemed confidential and HLA shall not disclose any of the same without client's written authorization to any third party, except to the extent that information is in the public domain or is required by law or under HLA's professional obligations to be disclosed.

## 19. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

Unless otherwise specified in Attachment A, all documents and information obtained or prepared by HLA in connection with the performance of the Services, including but not limited to HLA's reports, boring logs, maps, field data, field notes, drawings and specifications, laboratory test data and other similar documents (collectively called "Documents") are the property of HLA and HLA shall, in its sole discretion, have the right to dispose of or retain the Documents. HLA retains the right of ownership with respect to any patentable concepts or copyrightable materials arising from Services. HLA shall have the right to use the Documents for any purpose, unless such use would cause harm to Client or breach the terms under the section entitled Confidentiality. Client shall have the right to reuse the Documents for purposes reasonably connected with this project, including design and licensing requirements of the Project for which the Services are provided.

No party other than Client may rely, and Client shall make no representations to any party that such party may rely, on Documents without HLA's express written authorization.

## 20. COMPLIANCE WITH LAW

Client and HLA shall comply with applicable laws in effect at the time the Services are performed, which to the best of their knowledge, information and belief, apply to their respective obligations under this Agreement.

## 21. ATTORNEY'S FEES

If an action or proceeding is commenced to enforce the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys fees, costs and expenses.

## 22. GOVERNING LAW

This Agreement shall be interpreted and enforced according to the laws of the State of <sup>Hawaii GA 2/12/93</sup> ~~California~~, unless agreed otherwise. If any part of this Agreement is found to be invalid by a court of competent jurisdiction, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

## 23. NOTICES

All notices and communications required by this Agreement to be given in writing between HLA and Client shall be delivered to the persons designated by the parties in Attachment A. All other notices and communications from the Client shall be to HLA's designated Project Manager or to the Principal-in-Charge of the HLA office performing the work. Verbal communications shall be confirmed in writing.

## 24. ENTIRE AGREEMENT AND MODIFICATIONS

This Agreement, including attachments incorporated herein by reference, represents the entire agreement and understanding between the parties, and any negotiation, proposals or oral agreements are intended to be integrated herein and to be superseded by this Agreement. In any case of any conflict or inconsistency between provisions in the body of this Agreement and provisions in any contract document incorporated herein, the provisions in the body of this Agreement shall control.

Any modification to this Agreement shall be in writing and signed by authorized representatives of the parties.

### HARDING LAWSON ASSOCIATES

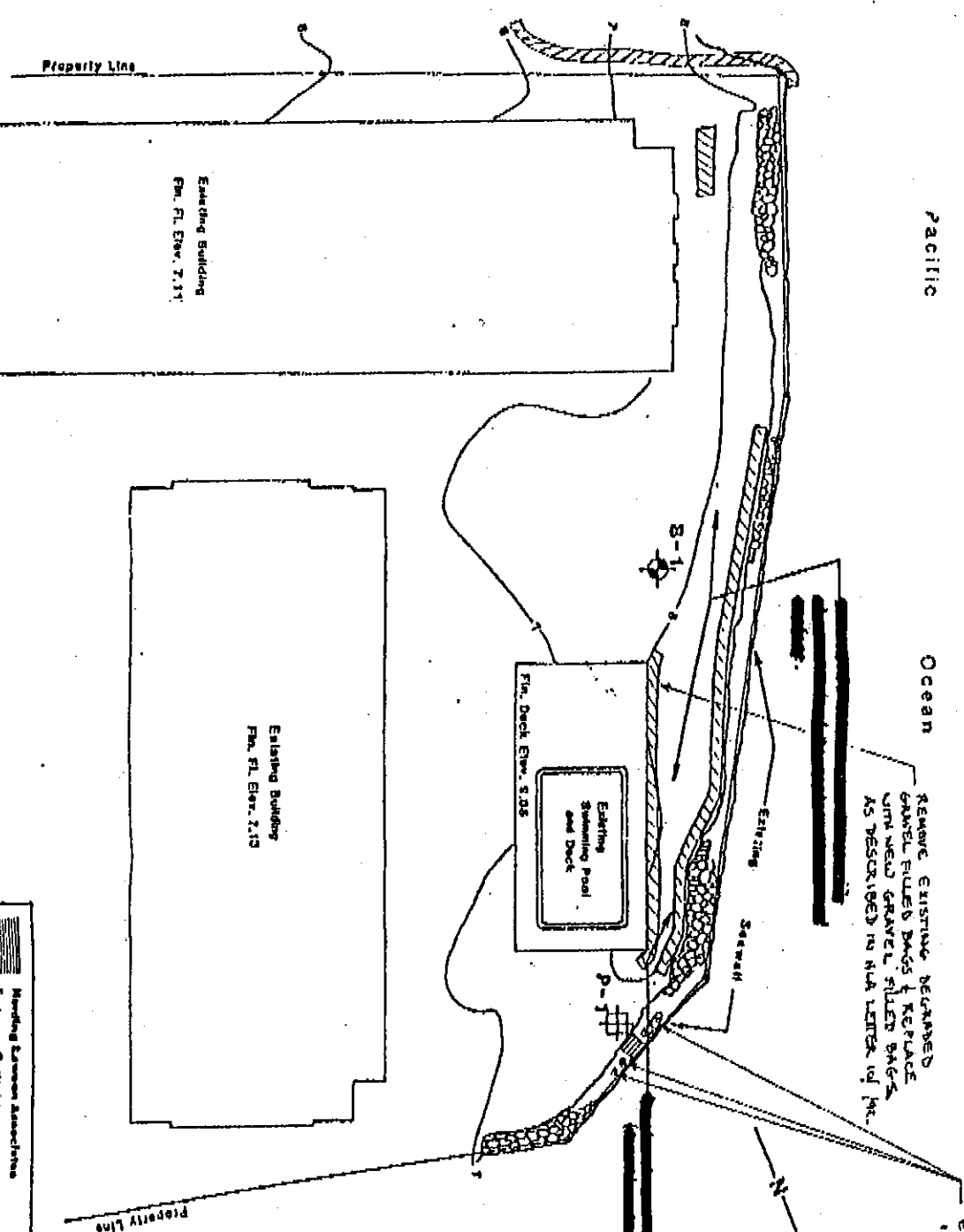
By: George T.S. How  
George T.S. How  
Title: Vice President

Date: February 12, 1993

### CLIENT

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_



REMOVE EXISTING NEARBY  
GRAVEL FILLED BAGS & REPLACE  
WITH NEW GRAVEL FILLED BAGS  
AS DESCRIBED IN NLA LETTER 10/1/92.

EXCAVATE "PIPES" AS DESCRIBED IN NLA LETTER  
10/1/92.

### Key

- B-1 Boring location
- P-1 Probe location
- Contour Elevation

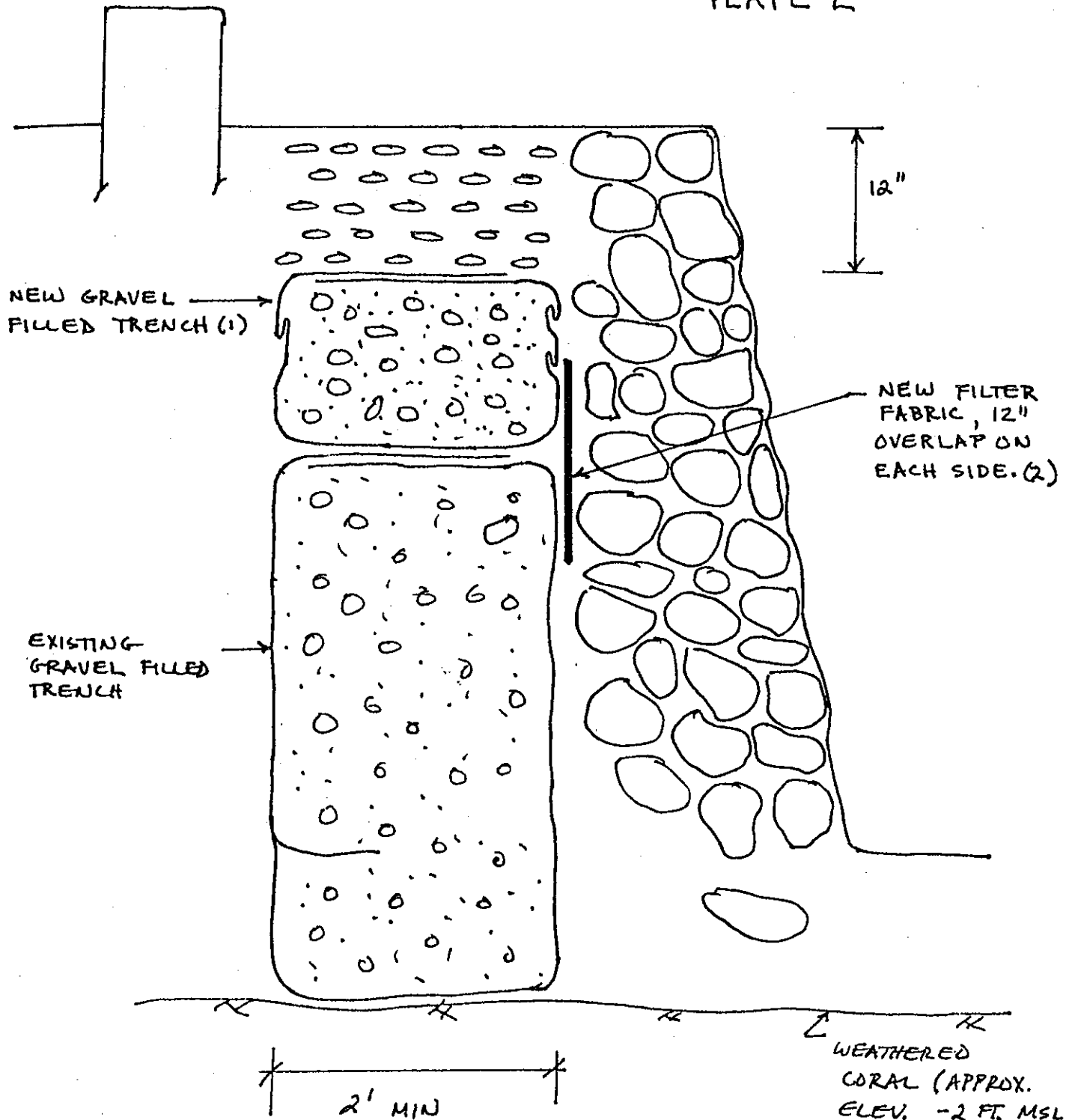
LOCATIONS OF PREVIOUS REPAIRS

Reference: Plot provided  
November 1, 1984 provided  
by Hale Kai Condominium.



PROJECT \_\_\_\_\_  
SUBJECT DRAWING: NOT TO SCALE

PLATE 2



- (1) GRAVEL & COBBLE SHOULD RANGE IN SIZE FROM  $\frac{1}{4}$  TO 12 INCHES WITH 85 PERCENT OR MORE IN SIZES SMALLER THAN 6-INCHES, AND WITH 3 PERCENT OR LESS PASSING THE NO. 200 SIEVE.
- (2) ALL NEW FILTER FABRIC SHOULD BE NONWOVEN AND HAVE A PERMITTIVITY OF AT LEAST 0.5 PER SECOND, SUCH AS SUPAC "BNP" OR EQUIVALENT.

**COASTAL ENGINEERING INVESTIGATION AT  
HALE KAI CONDOMINIUM, LAHAINA, MAUI**

*Prepared for:*

Hale Kai Condominium Apartments  
3691 Lower Honoapilani Road  
Lahaina, Maui, HI 96761

*Submitted by:*

Sea Engineering, Inc.  
Makai Research Pier  
Waimanalo, Hawaii 96795

#7-18

EXHIBIT 8 - Sea Engineering report

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# COASTAL ENGINEERING INVESTIGATION AT HALE KAI CONDOMINIUMS, LAHAINA, MAUI

## 1. INTRODUCTION

Site investigation were conducted by Sea Engineering, Inc. (SEI), on April 9, 2007 at Hale Kai Condominiums, Lahaina. The purpose of the visit was to assess the condition of seawall repairs over a portion of the condominium shoreline. The Hale Kai shoreline is fronted by a sloping cemented rock seawall for most of the length of the property (Figure 1). The slope of the wall changes, becoming nearly vertical along the northern length fronting the swimming pool (Figure 2). The sloping portion of the seawall may have originally been built as a revetment, likely with uncemented boulders. Repairs have been made over time by grouting the boulders together, and the seawall is now a rigid monolithic structure. Cracking in the seawall, and sinkholes and other signs of erosion behind the wall were first addressed in a February 1985 reconnaissance report by Harding Lawson Associates (HLA). A long stream of communications by consultants to the Hale Kai Condominium has been provided to SEI. These have been summarized in the following table.

**Table 1. Summary of Consultant Reports for the Hale Kai Seawall**

Document	Date	Notes
Reconnaissance, Hale Kai Seawall by Harding Lawson Associates	2-22-85	Reconnaissance survey of seawall conditions <ul style="list-style-type: none"><li>▪ Numerous concrete patches in seawall</li><li>▪ North and South sections of seawall set on coral ledges; middle section not set on rock</li><li>▪ Signs of undermining below seawall boulders</li><li>▪ Soil eroded and piping observed near pool</li><li>▪ Cracks observed in seawall grout</li><li>▪ Seawall cracking likely caused by undermining</li><li>▪ More detailed study recommended, including borings</li></ul>
Geotechnical Investigation, Hale Kai Seawall Repair by Harding Lawson Associates	6-7-85	Results of Geotechnical investigations and recommendations <ul style="list-style-type: none"><li>▪ Central portion of seawall founded on fine to medium sand extending to -2 ft elevation; erosion of sand causing problems with seawall</li><li>▪ A weathered coral layer 9 ft thick exists at the -2 ft elevation</li><li>▪ Gravel trench filter was recommended with base at -2 ft to eliminate erosion of sand behind seawall;</li><li>▪ Seawall may settle until founded on weathered coral layer</li></ul>
Letter from Harding Lawson Associates	8-22-88	Report of site visit on 8-12-88 <ul style="list-style-type: none"><li>▪ Various problems reported, including cracks in pool deck, undermining of seawall,</li></ul>

Document	Date	Notes
		<ul style="list-style-type: none"> <li>undermining of pool deck, erosion and piping at south end of wall.</li> <li>▪ Recommended another gravel filter wall installation at center area of seawall</li> <li>▪ Filling of piping holes with gravel.</li> </ul>
Letter from Harding Lawson Associates	7-13-89	Report of site visit on 7-9-89 <ul style="list-style-type: none"> <li>▪ Beach erosion south of building has continued</li> <li>▪ Central and northern portions of seawall performing adequately</li> <li>▪ 4 ft by 6 to 8 ft (deep) trench was excavated and open at south end of building for gravel filter placement</li> </ul>
Letter from Harding Lawson Associates	4-5-90	Report of site visit on 3-28-90 <ul style="list-style-type: none"> <li>▪ Beach erosion south of building has continued – recommend placement of gravel-filled bags at base of seawall at this location</li> <li>▪ No further erosion on ocean side of seawall</li> <li>▪ Piping has formed hole at southwest corner of property; recommend filling with geotextile and gravel</li> <li>▪ Continued maintenance may be necessary at toe of pool deck.</li> </ul>

As a result of the consultant's investigation and recommendations, numerous repairs have been effected behind the seawall. Of particular note, and as described in Table 1, HLA recommended the construction of a gravel filter wall behind the seawall. The purpose of the gravel filter was to prevent the fine sand soil from being eroded and washed out. According to the present Board President, the construction behind the seawall occurred in three phases. The first phase was placement of the gravel filter wall in front of the swimming pool at the north end of the property. The second phase was placement at the south end of the property, and the third phase was an approximate 50-ft section that connected the two. The last phase was apparently not constructed according to design, and rock boulders were placed without gravel or filter cloth. Portions of this 50-ft section of settled such that there are now void spaces behind the seawall.

The explanation given by HLA for the erosion behind the wall is undermining of the seawall and consequent hydraulic action on the substrate. Geotechnical investigation conducted in 1985 as part of the site investigations for design of repairs found that the soil conditions consist of fine to medium grained sand resting on a layer of weathered coral at about -2 ft MSL. The design reports are consistent in their assessment that settling of the seawall and the new filter wall may occur down to the -2 ft elevation where the more firm layer of weathered coral exists.

## **2. SITE INVESTIGATION**

A coastal engineer from SEI visited the site on April 9, 2007. The beach fronting the sand was in an accreted state, with sand burying the toe of the seawall around the exposed perimeter of the property (Figure 2). Because the toe was buried in sand undermining of the seawall was not observed except in a few locations where fractures and holes existed in the grouted surface of the wall (Figure 3). Nevertheless, given the nature of the construction, and the holes that were observed, we concur with HLA that undermining and consequent hydraulic sluicing under and behind the seawall has been causing the problems observed in the HLA reports.

Despite the failure areas, the seawall appeared strong and capable of resisting wave attack. The north and south repair sections also appeared to be in good shape, with no apparent sinkhole formation or slumping or settling of boulder fill behind the wall.

The approximate 50-ft section comprising the third phase of construction begins south of and adjacent to the pool deck. There is a noticeable decrease in the volume of basalt rock boulders behind the seawall in this section, and the back and underneath portions of the wall are exposed and un-supported in places (Figures 4 and 5). Undermining continues one to two feet underneath the side of the pool deck (Figure 5). It is also apparent from fresh sand deposits behind the seawall that wave overtopping occurs. This will also tend to have an erosional effect behind the seawall.

Existing conditions are shown schematically in Figure 6.

## **3. DISCUSSION**

A well-engineered coastal revetment is designed to be able to settle and adjust to minor amounts of scour, or a general change in the foundation conditions. The design relies on adequate material and embedment of the revetment toe to prevent failure. Monolithic structures, such as a seawall or in this case a grouted rock revetment, are stiff and subject to cracking or failure when the foundation becomes undermined. Because of the structural rigidity, the wall can span areas of undermining, and the undermining can become larger due to the hydraulic action of water motion through and under the wall.

Revetments are constructed with a layer of smaller material underneath the outer armor rock layer. The underlayer stone acts as bedding for the armor rock, but it also acts as a filter to reduce the hydraulic action of the pounding waves. The underlayer protects underlying filter fabric, which prevents the loss of soil from behind the revetment.

Well designed and constructed seawalls also benefit from a layer of gravel and filter cloth behind the wall to counter any hydraulic action (such as piping) that may occur.

The HLA design of placing a gravel filter wall behind the existing seawall appears to have been a sound solution to the problems found at the site. Their observation that settling of the both the seawall and gravel wall will likely continue until the structures can rest on the more durable weathered coral layer is also a reasonable conclusion.

The area of the third construction phase was constructed without filter cloth or gravel. The basalt boulders placed in that location have a nominal diameter between one and two feet, resulting in significant pore space between the boulders. Any hydraulic action caused by the back and forth action of waves working on undermined portions of the wall will not be dampened by the relatively large spaces between the rock. In fact, the turbulent sluicing action between the rocks will likely increase the erosive action on the underlying soil. As the soil erodes, the rocks will become unstable and settle.

#### **4. COURSE OF ACTION**

We see two potential courses of action, 1) do nothing except add more basalt rock to the settled area, or 2) re-construct the third construction phase area using geotextile and a gravel/cobble filter.

##### *Do Nothing*

The minimum approach would be to let the section settle and fill in the settled areas with more basalt rock. The reasoning with this approach is that the seawall and basalt rock fill will settle until the firmer substrate is exposed. Filling in with more basalt boulders will help protect areas behind the seawall from the effects of wave overtopping. However, there are many uncertainties, and the results may not necessarily be predictable. Problems include:

- Geotechnical investigations cannot always predict an uneven substrate, and the weathered coral area may be deeper than surmised.
- The weathered coral may also erode due to the large pore space between the rocks and consequent high hydraulic velocities and turbulence.
- Cracking of the seawall will likely increase, adding to the risk of future failure.

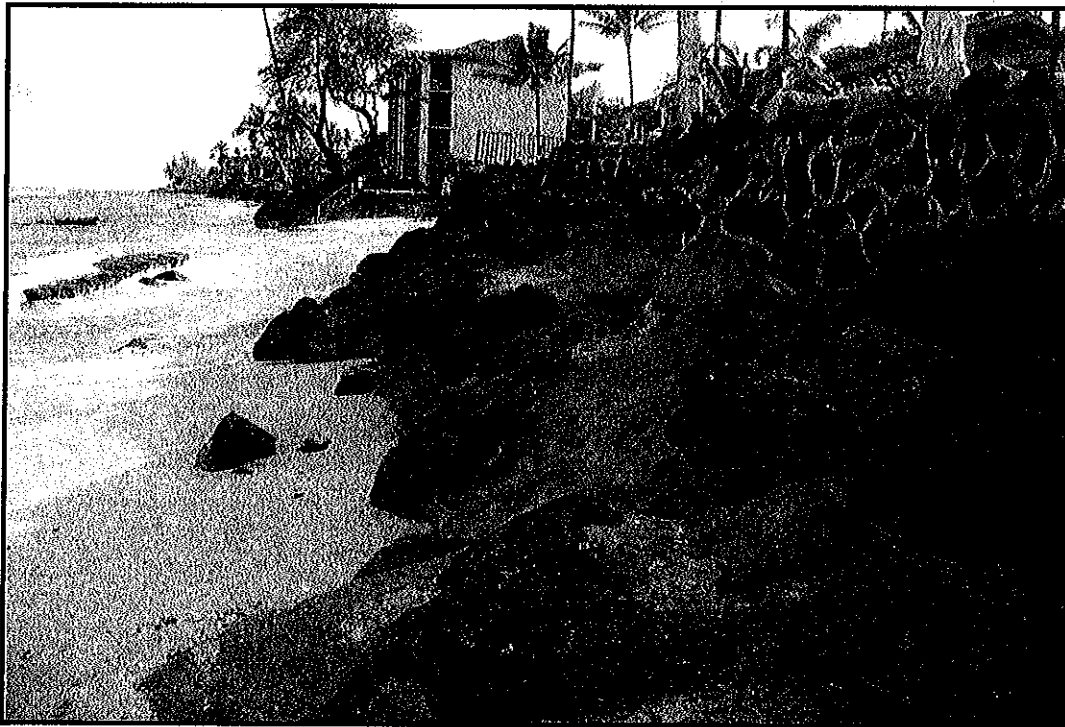
##### *Gravel and Geotextile Filter Construction*

A more costly but potentially more satisfactory solution to the problem would be to remove the existing basalt boulders, install geotextile filter fabric at the base of the eroded area behind the wall, and fill most of the space with coarse gravel or cobbles. Figure 7 is a schematic representation of this design solution. This is essentially an adaptation of the HLA gravel filter wall to the geometric configuration found in the phase 3 construction area. The stone would ideally be between about 1 and 4 inches in nominal diameter. A good gradation range in stone/gravel size is desired. Quarries typically sell "Surge Stone" in this size range. The gravel layer will likely settle over time, but it will tend to fill in void spaces and block the hydraulic sluicing action to help prevent erosion of the substrate. The existing basalt stone fill can be used as an armor layer on top of the gravel layer for protection from wave overtopping. Suggested construction configuration is as shown on the drawing, however minimum recommended layer thickness of the gravel and armor rock are also indicated.

Some areas of the seawall appear to be substantially unsupported due to erosion behind the wall. This may pose an existing hazard or a hazard during construction of repairs. We recommend consultation with a structural engineer to evaluate these hazards and to recommend a shoring design if necessary.



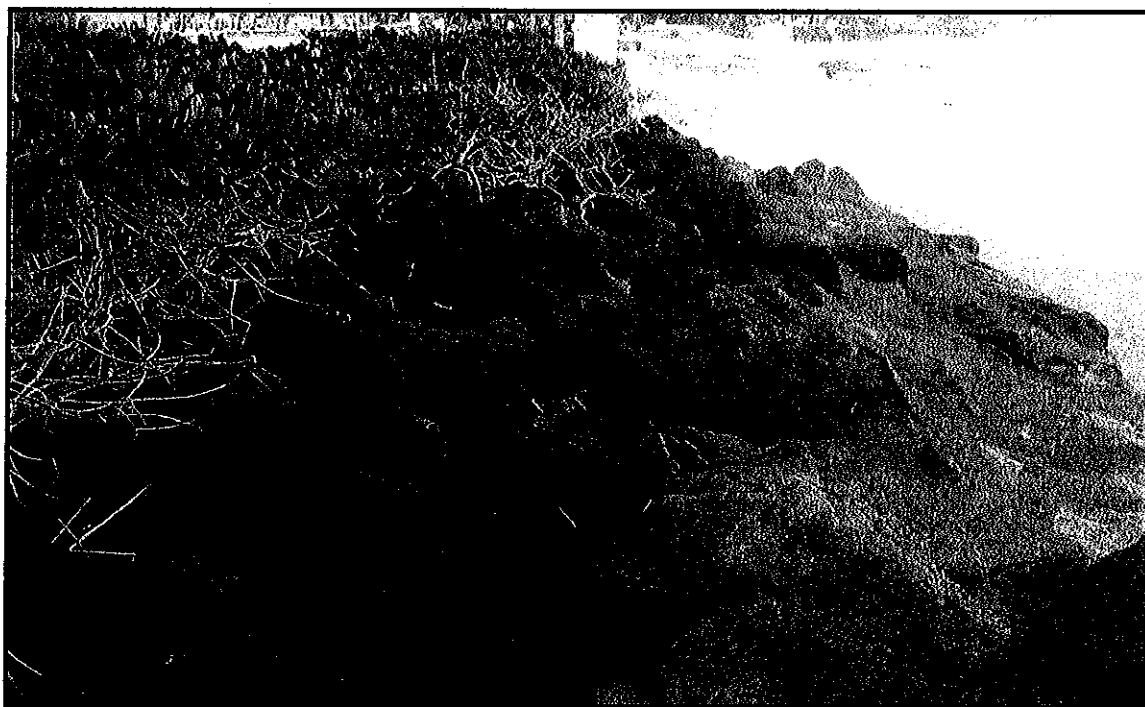
**Figure 1. Hale Kai grouted rock seawall**



**Figure 2. Hale Kai seawall showing transition in structure slope**



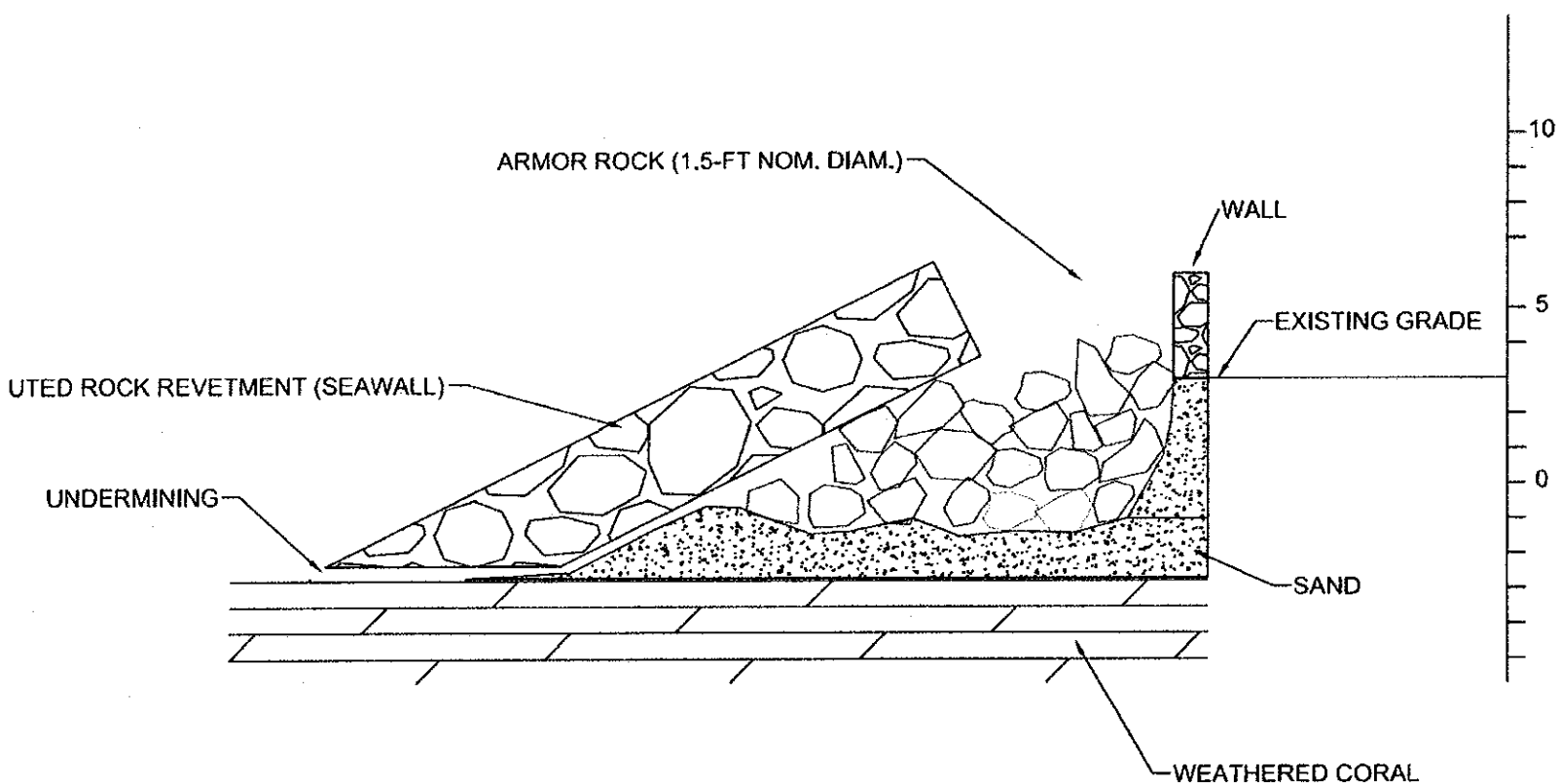
**Figure 3. Cracks, holes, and undermining in the seawall**



**Figure 4. Third phase construction area – foreground boulders have settled.**



**Figure 5. Third phase construction area showing undermining and settling of boulders behind the seawall and undermining of the pool deck slab. Sand deposition is caused by wave overtopping.**



## HALE KAI SEAWALL: EXISTING CONDITIONS

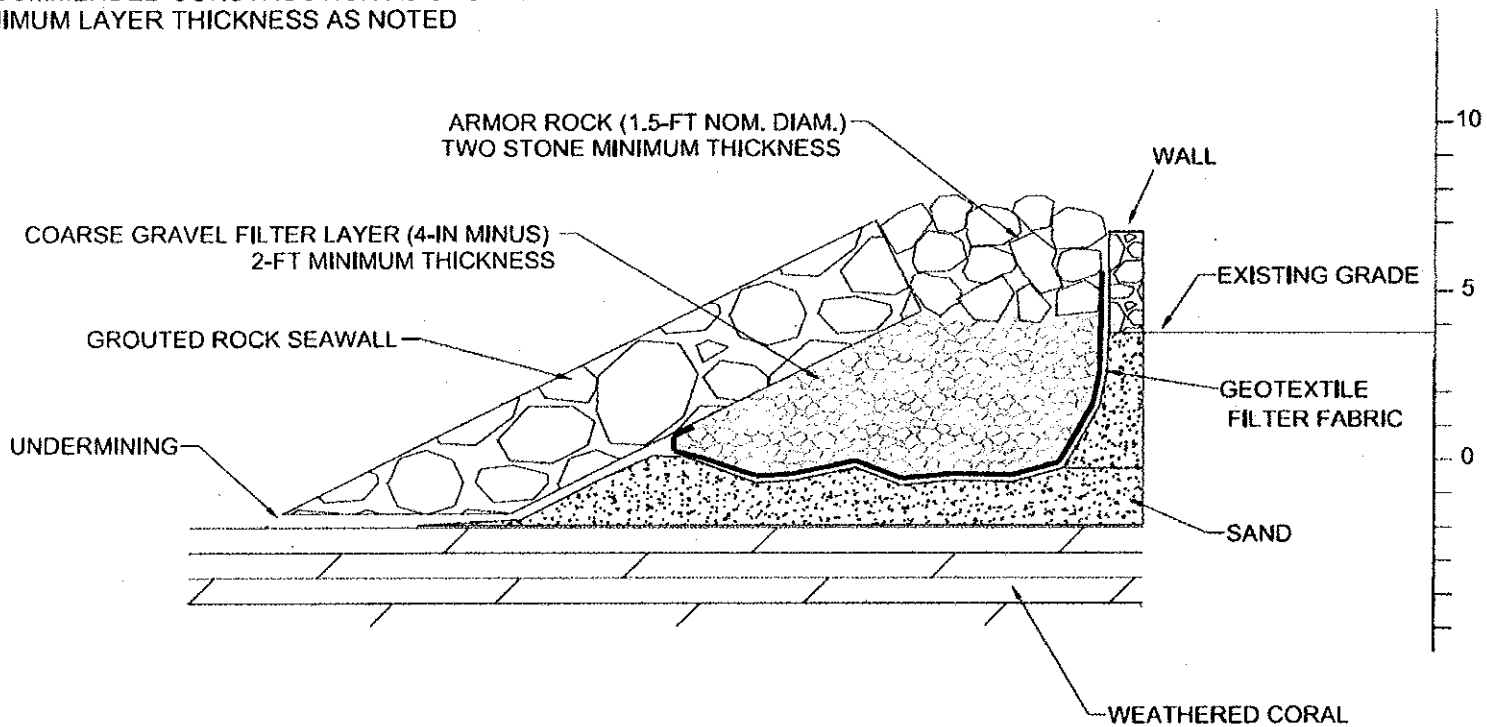
DRAWING IS SCHEMATIC ONLY

**Figure 6. Existing seawall construction at location of phase 3 repairs**



## NOTES

1. DRAWING IS SCHEMATIC ONLY
2. RECOMMENDED CONSTRUCTION AS SHOWN  
MINIMUM LAYER THICKNESS AS NOTED



## HALE KAI SEAWALL: GRAVEL FILTER

Figure 7. Recommended gravel filter at location of phase 3 repairs

**MOTION:** To accept the Cutting Edge maintenance proposal for the irrigation system work as follows: \$485 for labor, equipment, tools and delivery of supplies; and, materials not to exceed \$250.

Devlin / Haskell Unanimous Approval

Director Male has investigated options to install a handrail for the pool ramp. He explained that it would be ADA approved. The cost for the pre-fabricated handrail is \$350 for material and shipping. Mr. Brott recommended that a licensed contractor install the handrail. There is money in the Reserve Fund available to pay for the work.

**MOTION:** To proceed to install a pool handrail for safety, with a licensed contractor doing the work. Material costs are \$350, including shipping.

Male / Haskell

The Motion passed by a majority vote. Directors Johnson and Ford-Schenkar abstained.

On July 5, T & S Kafoa, licensed contractors, will be available to do emergency repairs on the seawall. Director Male recommended T & S Kafoa because of their license and good reputation. The contract is for labor and materials. All materials will be wheel-barreled onsite. The terms of the contract and the scope of the work were reviewed at length. The goal is to repair the wall to protect the property and the pool.

**MOTION:** To accept the proposal from T & S Kafoa in the amount of \$5,800.00 for emergency repairs to the seawall, with the following language added: 1) Materials will be delivered to the wall by wheelbarrow; and, 2) Hale Kai will remove necessary fencing and plants.

Male / Haskell Unanimous Approval

C. HKRRI REPORT

HKRRI Board member Sarah Devlin noted that rental and association management are interfacing well. There has been a continuing effort to distribute the House Rules in all of the units. Requests from guests and owners for high-speed Internet access have been logged. The HKRRI Rental Manager, Marsha Joseph, requested that the office be painted.

IX. RESIDENT MANAGER'S REPORT

The Resident Manager gave a report on accomplishments.

X. FINANCIAL REPORT

Ms. Woods updated the Board on the financial status of the Association. For the month of May, the Association had a net surplus of \$2,122, reducing the current year-to-date loss to \$1,362. There were no variances of consequence.

Board meeting  
July 17, 2004 - Exhibit 8

some modifications including a monthly rental fee of \$400 plus a three-year term lease. The past practice and the current proposed lease call for the AOA to pay for the utilities. It was noted that the area is zoned as "A2".

**Motion:**      *To approve the HKRRI proposed lease. (Devlin/Sharp)*

Motion **CARRIED.**

In Favor: Sharp, Devlin, Male, Johnson

Opposed: Ashfield, Rodriguez, Murrell

Mr. Ashfield suggested that the rent increase be comparable to the increase in AOA dues.

#### Seawall

An engineer from Honolulu has inspected the seawall and has reviewed the Harding Lawson report as prepared in 1986. The engineer's report was electronically distributed to all Board members. In summary, the engineer noted that a portion of the sea wall is settling in a more pronounced fashion than the remaining seawall. Major settling has occurred in the areas where a gravel-filled trench is lacking and at the corner of 101. The engineer has recommended adding more rock to the seawall or completing the gravel-filled trench in the gaps; the latter being the preferred solution.

Mr. Male has identified a licensed contractor who can lift the existing rock using manual labor. He indicated that Hale Kai is less than 20 feet from the high tide line and is allowed to place rocks on and below the wall to prevent damage from the incoming tide.

It was concluded that the Building Committee and the Landscape Committee will obtain separate bids for adding more rock and for installing a gravel-filled trench. Bid specifications shall be based on the engineer's report. A teleconference meeting will be scheduled within 60 days in order for the Board to make a final decision.

#### Wireless Network

President Johnson has made improvement to the wireless internet access. There are now wires between the two buildings eliminating a weak link in the previous design. HKRRI is not yet actively advertising this service as it continues to be under evaluation. Owners shall direct comments to President Johnson via email or the HKRRI Rental Manager.

#### NEW BUSINESS:

##### Door Frame Responsibility

The Owner of Unit #101 requested reimbursement for the expense associated with replacing the front door frame. Mr. Buchanan confirmed that the Declaration states that the owner is responsible for all doors, windows and the frame. In accordance with the Declaration, the Board denied the request.

DRAFT RMAH  
RECEIVED  
1/31/08

DRAFT

ASSOCIATION OF APARTMENT OWNERS  
HALE KAI  
BOARD OF DIRECTORS MEETING  
Monday, November 12, 2007

**DIRECTORS PRESENT:** John Male, President; Emilio Radocchia, Vice President; Bill Devlin, Treasurer; Kathleen Sharp, Secretary; Jeannie Murrell, Steve Johnson, Directors.

**DIRECTORS ABSENT:** Becky Rodriguez, Director.

**OTHERS PRESENT:** Penny Munroe, General Manager; Michael Buchanan, Account Executive; Nai'a Properties; Enza Froio, Transcriptionist.

**OWNERS PRESENT:** Sarah Devlin, 108; Lynn Kasper, 215; Arlene Platt, 117; Sandra Schenkar, 104; Steven Ashfield, 210; Don Newton, 201; Isaac, 207; Dorn, 103.

**CALL TO ORDER:**

President John Male called the Board of Directors Meeting of the Association of Apartment Owners of Hale Kai to order on Monday, November 12, 2007 at 10:30 a.m.

**CERTIFICATION OF NOTICE:**

President Male certified that Notice of Meeting was sent to all Directors, posted on property, and a copy was filed in the office on November 5, 2007.

**APPROVAL OF MINUTES:**

**Motion:** *To approve the Board of Directors Meeting minutes dated July 10, 2007, as presented. (Devlin/Johnson)*

**CARRIED** unanimously.

**TREASURER'S REPORT:**

Treasurer Devlin deferred his report to the Budget discussion.

**HKRRI REPRESENTATIVE REPORT:**

Arlene Platt thanked the Board for their efforts. She requested that the Board consider cost-sharing the expense to install a more secure door for the manager's office.

**MANAGING AGENT'S REPORT:**

Ms. Munroe reported that Nai'a Properties has added a Maintenance Division to its operations. Nelson Ramelb is the new Maintenance person and will be completing projects for HKRRI. Nalani Alavazo has been hired to work alongside Linda for approximately three days per week for HKRRI. Ms. Munroe announced that she is in the process of purchasing Nai'a Properties Inc.

Exhibit 8 - Board minutes 11/12/07

## **OLD BUSINESS:**

### **Ratify Polynesian Pole Bid**

**Motion:**      *To ratify the approval of the expenditure of \$23,000 to Polynesian Pole & Custom Homes LLC with regard to the seawall. (Murrell/Devlin)*

Motion **CARRIED**.

Opposed: Johnson

### **Seawall Repair Update**

President Male reported that he has installed stones behind the seawall in an effort to prevent the splatter of gravel. There was a general consensus of the Board that the seawall repair was completed successfully.

Mr. Johnson indicated that the engineering specification clearly stated the importance of the trench to reach the level of the coral; however, the repair is only two (2) feet below the base of the decorative wall behind the seawall. Further, the Board chose not to proceed with bids of approximately \$10,000 that would require the use of a backhoe. Rather, the Board chose to approve a bid of approximately \$25,000 to complete the project via manual labor. Mr. Johnson expressed that it was critical to follow the engineering specification and suggested that competitive bids should have been sought. He indicated concern that the core problem was not fixed.

Ms. Murrell noted that the engineering specification indicated two repair options, of which one option was to proceed as the Board elected. She noted that it was the contractor's decision to not use a backhoe on the property as it would jeopardize the landscape.

Mr. Devlin noted that the Barrera Reserve Report reflects a seawall with a 15-year projected life before refurbishing. The Board will continue to monitor the seawall.

### **Ratify Lanai Seating Expenditures**

**Motion:**      *To ratify the approval of the expenditure of the additional \$46 per umbrella. (Murrell/Radocchia)*

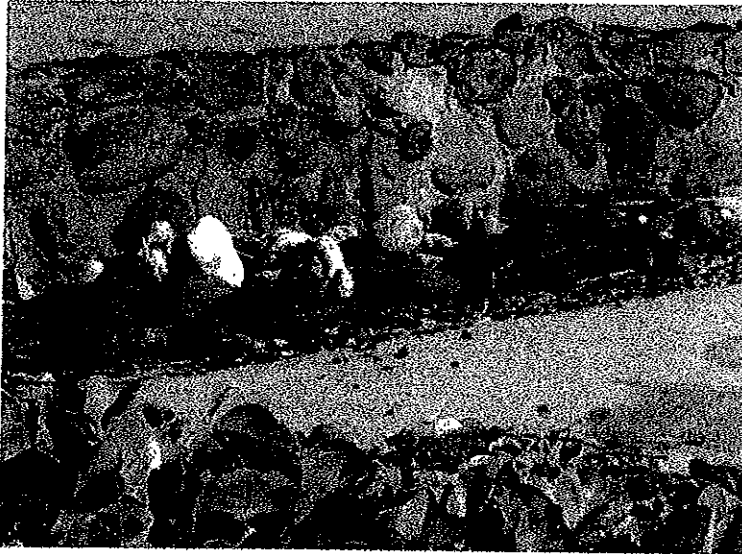
**CARRIED** unanimously.

## **NEW BUSINESS:**

### **Insurance Policies**

Ms. Munroe reported that Kathleen Sharp indicated concern that the reconstruction per square foot cost is low. Ms. Munroe will further investigate with Mr. Gerlach. She noted

PROPERTY INSPECTION  
REPORT FROM  
9/6/07 NAI'A



John Male has been placing beach rock at the sea wall to address erosion of sand into the pool and deck area.

**Deck Furniture:** Is clean and well placed. **Note:** Some units will be rotated out for refurbishing. Pending.

**Area Lighting:** Most lighting fixtures are functioning properly. **Update:** Charles has been in contact with a lighting specialist concerning walkway light repairs.

**Area Signs:** All signs are legible and in good condition. **Update:** Post removal pending.

**Pool Equipment:** Working fine with no problems noted. **Update:** Ultraviolet filter are working very well.

**Pool Gate:** The gates are functioning well. **Note:** Fencing at Northend will be repaired to allow proper closure of gate. Pending

**Barbecue Areas:** Both are working and the area is clean. **Update:** Thorough cleaning of grills has been started. **Note:** Charles has managed to remove most of the burn build up.

#### FIRE EQUIPMENT

1. **Current Extinguisher Tags:** All units have been inspected and are current for the remainder of the year.

Exhibit 8 - Property Inspection Report

ASSOCIATION OF APARTMENT OWNERS  
HALE KAI  
BOARD OF DIRECTORS MEETING  
Tuesday, July 10, 2007

RECEIVED EMAIL  
1/29/08

**DIRECTORS PRESENT:** John Male, President. Via teleconference: Emilio Radocchia, Vice President; Bill Devlin, Treasurer; Becky Rodriguez, Jeannie Murrell, Steve Johnson, Directors.

**DIRECTORS ABSENT:** Kathleen Sharp, Secretary.

**OTHERS PRESENT:** Penny Munroe, General Manager; Michael Buchanan, Account Manager; Nai'a Properties.

**OWNERS PRESENT:** Don Newton, 201; Nancy Haskell, 203.

**CALL TO ORDER:**

President John Male called the Board of Directors Meeting of the Association of Apartment Owners of Hale Kai to order on Tuesday, July 10, 2007 at 3:05 p.m.

**CERTIFICATION OF NOTICE:**

President Male certified that Notice of Meeting was sent to all Directors, posted on property, and a copy was filed in the office on July 6, 2007.

**APPROVAL OF MINUTES:**

**Motion:** *To approve the Board of Directors Meeting minutes dated June 15, 2007, as presented. (Murrell/Rodriguez)*

**CARRIED** unanimously.

**Motion:** *To approve the Organizational Meeting minutes dated June 16, 2007, as presented. (Murrell/Rodriguez)*

**CARRIED** unanimously.

**OLD BUSINESS:**

**Vinyl Fence**

The vinyl fence behind the manager's unit will be installed the week of July 16, 2007.

**Ultraviolet Pool Sanitizer**

**Motion:** *To ratify the decision to accept the Ohana Pools bid for the installation of a ultraviolet sanitizer with a back-up chlorinator at a cost not to exceed \$1,750. (Murrell/Devlin)*

**CARRIED** unanimously.

July 10, 2007 - minutes & seawall bid

**NEW BUSINESS:**

**Seawall**

President Male reported that Mr. Satobi, a licensed seawall expert, has proposed that a conveyor belt system be utilized to transport boulders onto the property and that a crane be rented to install a layered rock boulder wall. Such actions will cease erosion problems and fill the existing holes at the end of #101; between the pool and #101; and by the barbecue pits in an aesthetically pleasing manner. The total approximate cost is \$45,000. The Board agreed that President Male will request a written proposal from Mr. Satobi for review by two engineers. President Male will arrange for Mr. Satobi to speak directly with Mr. Shapiro (engineer). President Male will notify Board members of the outcome of the discussion and the engineers' opinions.

**Umbrellas**

**Motion:**

*To authorize the Board President to purchase a maximum of five (5) umbrellas at a cost not to exceed a cost of \$750 each and such umbrellas shall not be used until the 2008 winter season.  
(Rodriguez/Johnson)*

**Motion FAILED.**

In Favor: Rodriguez

Opposed: Radocchia, Murrell, Johnson, Devlin

**Motion:**

*To authorize the Board President to purchase a maximum of five (5) umbrellas at a cost not to exceed a cost of \$750 each and such umbrellas be installed immediately. (Johnson/Murrell)*

**Motion CARRIED.**

In Favor: Murrell, Johnson, Devlin

Opposed: Rodriguez, Radocchia

Nai'a Properties will direct the Site Manager to clean the umbrellas on a daily basis and to close the umbrellas in the evening.

**DATE OF NEXT MEETING:**

The next Board of Directors Meeting is scheduled for Monday, November 12, 2007.

**ADJOURNMENT:**

Being no further business to come before this Board, the meeting is adjourned at 3:55 p.m.

Respectfully submitted,

Enza Froio

*Aloha Office Services*

Transcriptionist

\*\*\* The Minutes were transcribed from cassette tape as the Transcriptionist was not in attendance.

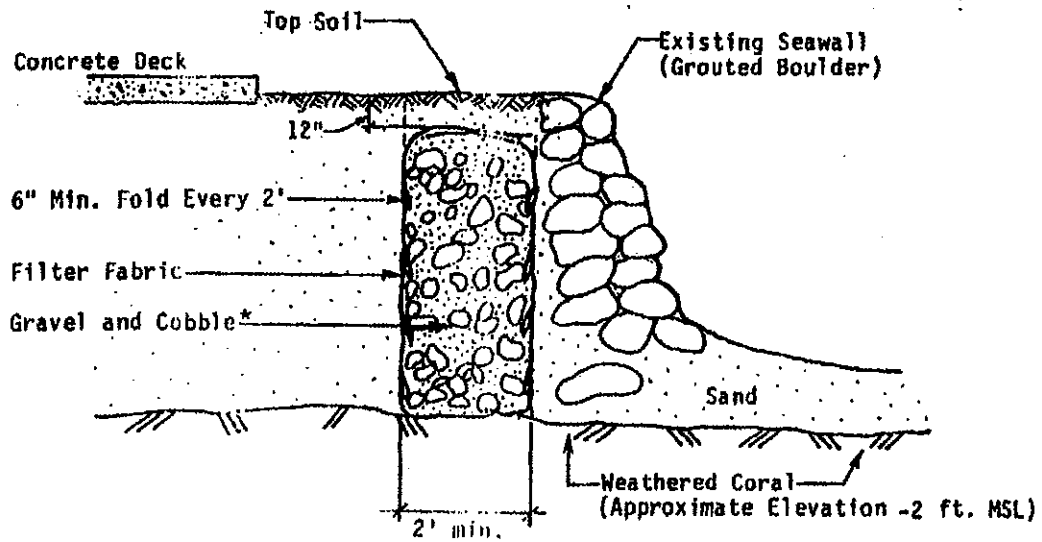


## **Request for Bid Hale Kai Seawall Maintenance**

### **Specification of work:**

1. Dig a trench approximately 50' long by 8' deep by 2' wide immediately behind existing rip-rap bolder seawall. Smaller rock and stones behind existing seawall must be removed so that the excavated trench abuts the existing large bolder seawall. Excavated clean sand may be disposed upon the beach; excavated rock and rubble may be re-used as part of the finished gravel-filled trench.
2. Line excavated trench with overlapping filter fabric, as shown in attached sketch.
3. Fill excavated trench with excavated smaller rock and rubble. Supply gravel to fill the remainder of trench.
4. Powered excavation equipment must be capable of gaining access between pool and park building without causing excess damage to existing landscaping.
5. Work to be completed within 3 days of start. Time of start to be in late April or May, with a weather prediction calling for low surf and low tides (?).

Note: Not to scale



\* **NOTE:** The gravel and cobble should range in size from  $\frac{1}{4}$  to 12 inches with 85 percent or more in sizes smaller than 6 inches, and with 3 percent or less passing the No. 200 sieve.

**HLA** Harding Lawson Associates  
Engineers, Geologists  
& Geophysicists

### Gravel-Filled Trench

Hale Kai Seawall Repair  
Lahaina, Maui, Hawaii

FIGURE

1

DRAWN	PROJECT NUMBER	APPROVED BY	DATE	REVISED	DATE
kar	30447	SMA	5-31-85	7. 7/95	1/6/95